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2002

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**Human Rights, Reproductive Rights, and Population Policies:  
A Theoretical Intervention, an Analytical Proposal,  
and an Application to the Case of Mexico**

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and an Application to the Case of Mexico**

**by**

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## **Dedication**

I dedicate this dissertation to Tracy Citeroni, the love of my life and most fulfilling intellectual partner. It is thanks to her that I was able to survive the process that led to the completion of this document.



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My most sincere appreciation to Ron Angel (my supervisor) for his support, advice, empathy, and understanding. Had it not been for his firm and wise intervention, this dissertation would have never been completed at the University of Texas.

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Alejandro Roberto Cervantes-Carson, Ph.D.

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The central objective of this dissertation is to study the relationship between reproductive rights and population policies, at an international level and within national contexts.

My dissertation research achieved this general goal in three ways. First, I offer a theoretical intervention in the contemporary debate about human rights; on their global need, validity, universality, and foundations. Second, I generate an analytical proposal for the study of reproductive rights as an international discourse and as a group of normative standards within nations. Third, I develop an application of the analytical framework to the case of contemporary Mexico.

In chapter one, I evaluate the virtues and problems of the contemporary discourse on human rights in light of the debate between critical theorists,

communitarians and liberal philosophers about the possibility of universal moral judgment.

Situated within that theoretical debate, in chapter two I analyze the social and normative meaning of reproductive rights. I also offer a sociological interpretation of the relationship, as well as the conflicts and tensions, that emerge between the enforcement of population policies of nation states and the rights of citizens to decide over their bodies and reproduction. My intention is to advance an analytical proposal for the study of reproductive rights within the social and political dynamics of specific countries.

In chapter three, in turn, I examine contemporary Mexico (since the 1970s) as an empirical case where the enforcement of population policies by governmental institutions has resulted in authoritarian practices that have violated the rights of Mexican citizens, despite its liberal constitution and legislation, and the emergence of civil organizations promoting the defense of reproductive rights in the country.

Finally, this dissertation belongs to the current tradition of critical theory. It is informed by Habermas' theory of communicative action, and benefits from the insights of both the debate on discourse ethics, and on deliberative democracy.

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## **Introduction**

The main goal of this dissertation is to study the relationship between reproductive rights and population policies, both in the dimension of international discourse and within the social dynamics of national contexts. This general goal was developed by way of three interlocking parts. First, I offer a theoretical intervention in the contemporary debate of human rights; on their global need, validity, universality, and foundations. Second, I produce an analytical proposal for the study of reproductive rights as an international discourse and as a group of normative standards within nations. Third, I use this analytical framework and apply it to study the case of contemporary Mexico.

I would situate this dissertation project within the current tradition of critical theory. It is informed by Habermas' theory of communicative action (chapters one and two), and benefits from the insights of both the debate on discourse ethics (chapter one), and on deliberative democracy (chapters one, two, and three).

In chapter one, I explore the contemporary debate on the philosophical status of human rights and the moral claim to their universality. Are human rights universal? Do human rights have philosophical foundations? Does the claim to universality come from the presence or absence of foundations? Do we need convincing and solid foundations in order to be able to claim that human rights are universal? Are there alternative sources for establishing human rights as universal normative standards? Or by contrast, is the question about universality

and philosophical foundations even relevant or useful? Should we abandon the whole debate about foundations and accept the political and practical fact that what human rights require is not theoretical reflection but ideological conviction and political action? Should we establish their universality by way of a practical agreement with legal power and focus our energies instead on their expansion, protection, and enforcement?

The exploration of the problems and the debate about foundations and universality will lead me to argue that the proceduralist and multidimensional perspective of discourse ethics (in the tradition of critical theory) offers important insights and alternatives to both of these problems.

I identify two additional problems that hamper the universal capacity of human rights: social inequality and the institutional conditions of the United Nations.

Despite the explicit efforts to abstract and lift social inequality from the definition and process of entitlement<sup>1</sup>, I argue that all basic forms of social inequality actually constitute counter-universal forces that are built into the social context of nations, and thus sociologically predate international entitlement and the actualization of human rights. Furthermore, it is highly problematic to assume that it is enough to abstract them from their formal definition to rid all social processes of entitlement and actualization from the destructive and unjust forces of inequality.

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<sup>1</sup> "Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status ... " (Universal Declaration of Human Rights, 1948, Robertson, 1999, Appendix B).

I end the chapter by arguing for the need of a critique of the institutional operation, and of the system of differential powers among nation members as crucial obstacles for the democratic formation of international agreements and accords.

Reproductive rights belong to the group of human rights that are by definition "social", that is that they require certain conditions and provisions from nation states in order for their citizens to be able to exercise them. This dependency on state action creates a unique set of political conditions and power relations that I believe need to be not only acknowledged, but carefully analyzed.

In chapter two, I study the international definition of reproductive rights and its concurrent discourse. Throughout the chapter I develop a normative reading and a sociological interpretation of the process of making reproductive decisions. The general goal is to offer an analytical and interpretative framework for the study of reproductive rights in specific national contexts.

I start by examining the two main components that define reproductive rights. First, I introduce an interpretation of the process of human reproduction and signal the segments that have become the basis for the construction of the normative discourse. Second, I explore the sociological and political significance, as well as the implications that these rights have been defined as "social rights", that is rights that imply a certain type of relationship between nation states and their citizens. Third, I identify two contentious issues in the history of their definition: entitlement and responsibility. While the debate around entitlement has allowed for the emergence of a thoughtful and more refined definition, the

problem with the concept of responsibility that qualifies these rights remains, in my estimation, largely unresolved and politically problematic for citizens, because it formally allows for discretionary intervention from states.

Next, I move to the analysis of the assumptions that are embedded in the current international definition of reproductive rights. There are a series of assumptions that can be derived and made explicit from the definition and its historical development. However, there are others that are not easily derived and thus have remained basically implicit and unthematized. Yet these are not secondary. I contend that these sets of assumptions are fundamental for the exercise of reproductive rights, both in the private and public realms, and decisive for reproductive decision-making processes.

What would be the ideal situation and process for making a reproductive decision? Taking Habermas' lead, I use the analytical intention of his "ideal speech situation" to produce an "ideal reproductive decision-making process." Informed by the standards of justice and equality suggested by contemporary human rights and feminist theory, I thematize the required elements, the key social relations, and the necessary conditions for an "ideal process."

Having established the ideal normative, I turn my attention to the sociological dimension. Social structures and social relations represent a permanent jeopardy for the actualization of the ideal normative. I conclude by assessing the disturbances that the ideal reproductive decision-making process suffers when placed in contemporary societies; that is, within social contexts that are structured unequally, and where the prevailing form of social relations is

domination. For both the private and the public realms, I identify two main sources of disturbances: power relations and systems of social inequality. Finally, I examine the distortions these create to the ideal process; the constraints they impose over individuals and couples, as well as the effects they have on the process of formulating and carrying out reproductive decisions.

Chapter three is an application of this framework and analytical proposal to the case of Mexico. Throughout the 20th century the Mexican state has defined the relationship between development and population growth in two radically different ways. First, population growth was conceived to be a source of national power and a requirement for economic growth and social development. To the extent of this definition, population growth was fostered and diverse policies were directly established to stimulate demographic growth or contribute to this goal. However, in the 1970s this conception was drastically changed, and the Mexican state moved from a position that stimulated population growth to one that controlled it. In fact, the state embraced a neo-Malthusian stance that now perceives population growth as a major obstacle for economic and social development. This change in the perception and definition of the impact of population growth over development was not only dramatic but most importantly it was enabled institutionally with a sense of urgency and a legal goal of permanence. With the full support of the Legislative branch of government, the Executive changed articles of the national constitution and introduced the General Law of Population. The new law not only explained the change in conception, but also created the institutional means for the translation of the spirit of the legal

transformations into specific policies. The new legal frame charged certain institutions for the design and others for the implementation of population policies. The goals were very clearly established: to regulate demographic phenomena in general, and to curtail the dynamics of growth while controlling fertility rates in particular. The General Law stipulates that these goals, however, should be pursued fully respecting the rights of Mexican citizens to decide the timing and number of children to have.

Without the simultaneous processes of medicalization and institutionalization of reproduction in Mexico, it is hard to imagine how reproductive decisions would have been uprooted from the social space of the private realm and displaced to the public realm of medical knowledge, and of institutional and political actions. I trace and interpret central characteristics of these processes and their consequences for reproductive rights in contemporary Mexico.

In the past three decades, a governmental and national family planning program has been the central tool for the implementation of fertility control policies in Mexico. I evaluate the impact that this program has had over fertility levels, as well as the institutional dimension of the provision of contraceptive services. Governmental medical institutions have been charged (by law and policy design) both with achieving fertility demographic goals and respecting the reproductive rights and decisions of individual citizens.

Since its inception in 1973, the way of designing and enforcing fertility control policies has involved a large number of institutions, and a diverse range of

individuals and groups of governmental employees all committed to a common set of objectives and strategies. From a sociology of institutions perspective I analyze the mechanisms through which population policy is designed, planned, and executed. Given Mexico's contemporary history of semi-authoritarianism<sup>2</sup> both in its political system and its bureaucratic decision-making process, we should expect the area of population policies to follow the general patterns of political procedure and administrative practices. However, to what extent have fertility control policies, and the political procedures and administrative practices that set them in motion hindered and encroached upon the rights of citizens to determine their reproduction?

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<sup>2</sup> A hybrid of a liberal constitution and legal framework, and authoritarian political practices and rule (Camp, 1999).

## **Chapter 1: The Unfulfilled Universal Capacity of Human Rights: An Intervention in the Theoretical Debate**

### **1.1 INTRODUCTION: WHY THEORIZE ABOUT HUMAN RIGHTS?**

While the practical and political relevance of human rights is rarely disputed, and it is common to find extensive support for a global defense and protection of human rights, theoretical reflections are frequently rendered suspicious and theory development is questioned as an area of knowledge or field of research. The cry is all too familiar: Why theorize about human rights, when what we need is to double our efforts for their pervasive acceptance as normative standards, and to develop effective mechanisms to stop their violation and secure their extensive respect?

In this chapter, however, I will defend not only the legitimacy of theoretical deliberation on human rights, but in addition the idea that theory development is essential for the possibility of human rights ever becoming international normative standards, and fundamental for crucial political decisions and actions that attempt to safeguard and empower individuals and groups all over the world.

I start by offering a general definition of human rights and by identifying a series of conceptual links that, I believe, are fundamental to their contemporary use and interpretation (section 1.2).

On the basis of that definition, the attention shifts to the question of foundations and universality. Do human rights have or need foundations? Is there



any legitimacy in the universal claim of human rights? As international normative standards, how universal can human rights be? Both the issue of foundations and that of universality are part of ongoing and unresolved current debates. First, I propose that the central axis of the contemporary debate on the philosophical foundations and the universality of human rights can be found in the possibilities and problems of universalizing moral judgments (section 1.3). Second, I argue for multidimensional interventions that simultaneously address the practical-political, substantive, and meta-ethical spheres of the problem, as a way of moving forward in current debates about human rights (sections 1.4 and 1.5).

Finally, using a sociology of institutions perspective and a deliberative model of democracy, I analyze the United Nations as an institution with global qualities and explore what I have identified as the unfulfilled universal capacity of contemporary human rights. I argue that while the United Nations is a unique and privileged social space within which global agreements can be reached, it is crucial to recognize that its undemocratic and non-deliberative institutional system and arrangement constitutes a paramount hindrance to the legitimacy of agreements, and to the universal claim of human rights as international normative standards of social and political behavior (section 1.6).

Although not always explicit, the arguments of this chapter have been constructed through a dialogue and debate with the theses and interpretations of two authors: Norberto Bobbio (1990) and Michael Freeman (1994).

In spite of the differences in analysis and forms of argumentation, both Bobbio and Freeman coincide that theoretical deliberation and research is of

crucial importance, especially in light of the normative and political consequences of cultural relativism. I strongly support and will argue this position throughout this chapter.

However, the great separation happens when addressing the issue of foundations and universality. While Bobbio's forceful attack of research that attempts to find an absolute foundation for human rights, is largely compatible with Freeman's criticism of foundationalism without epistemological grounding, and with the critique I level against the monological and non-deliberative rationality of essentialism, the resolution he proposes –I believe– is not very convincing. Bobbio contends that "the fundamental problem of human rights today is not so much how to *justify* them but how to *protect* them. It is not a philosophical problem, but a political one" (1990, p.61). And although Bobbio ends up advocating a philosophical work informed by the "historical and social sciences", his solution would represent for Freeman (and I would coincide) a delicate abandonment of the philosophical debate; leaving the terrain wide open to a fight between relativists and foundationalists (or essentialists).

The position that Freeman holds, which I also defend in this chapter, is that the difficulties and contentions of the contemporary debate about the philosophical foundations of human rights do not justify abandoning that sphere of discussion and research. On the contrary, what is required are interventions capable of questioning approaches and paradigms, and perhaps suggesting new routes of analysis and deliberation. For Freeman, however, the basic clues can

come from accepting the challenge of philosophical anthropology, but reformulating it from a historical and epistemological perspective.

There is a tension in contemporary philosophy between the concept of universal human rights and that of moral pluralism. If rights are grounded in interests and interests are grounded in ultimate values which are not rationally decidable, then rights are subject to disagreements that are not rationally decidable. Human rights then can have foundations. The foundations for human rights cannot, however, be superior to all rival means of reason (1994, p.513-14).

Although much more elaborate than Bobbio's solution, I do not find Freeman's alternative persuasive, for his restricted definition of rationality isolates values from rational argumentation, discussion, and debate. From this definition, rationality only pertains to the sphere of interests. Therefore, a moral point of view is something that is held outside the realm of rational argumentation and on the basis of values that cannot be decided in this way. While Freeman strongly upholds theorizing human rights, his grounding proposal represents, in effect, an abandonment of an entire area of theoretical research, which is the development of theory in the moral and normative sphere of rationality.

In contrast, my position (following Habermas and Benhabib) uses a more comprehensive model of rationality, and starts by assuming a strong connection between values and norms<sup>3</sup>. Likewise, and specifically for human rights I suggest that orienting values, moral judgments, and normative proposals not only can be subjected to rational analysis and debate, but should be constructed and always defined as open to critique, and deliberation. Furthermore, these deliberations need to be public, collective and take place within a context that can assure

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<sup>3</sup> See Habermas (1984), Chapter I, sections 1 & 3, as well as Benhabib (1992), Chapters 1 & 2.

reaching reasonable agreements between free and equal participants, if contemporary human rights can ever realize its claims to universality and international legitimacy.

## **1.2 DEFINING THE POINT OF DEPARTURE**

From a conceptual perspective, human rights can be analyzed through two theoretical dimensions: as an individualization of the social domain and as a moral reference for social relations.

The conceptual terrain of human rights is that of the relationships that are established or can potentially be established between civil societies and their corresponding nation states. Their social and political meaning is directly related to the capabilities that individuals have, as members of a given civil society, to defend themselves from the operation and actions of the state. They are, to say it somehow, a permanent universal gaze, a moral regulator that national states are acting satisfying not only the needs of the majority, but respecting the integrity and the specific existence of minorities and all individuals, regardless of their political affiliation, social condition, and specific power. From a supra-morality that is designed and has life at an international level, it is translated into national moralities that are incorporated in the legal frameworks of each nation, in accordance to the different constitutions and conceptions about justice that are predominant, to the different forms in which political power is regulated and exercised, and to the real way in which politics is orchestrated and developed.

On the one hand, to speak of human rights is to speak of the realm of particularity or, better still, of the particularization of civil phenomena. All and

each one of the individuals that compose a society are constituent and count as people, as individuals embodied with specific necessities and endowed with rights. In a population, the respect of those rights and the consideration of those necessities lead inevitably to the particularization of social action, to the individualization of social beings. It is in this sense that unique events matter, even those that are lived in isolation, in confinement or hidden away from the public gaze. All events acquire social relevance if they jeopardize the integrity of individuals or represent the negation of the individual self of a human being. What makes the events socially legitimate concerns are not their statistical weight or if they can be argued to be the consequences of a pattern of social behavior, but the fact that some action, organized or not, foreseen or accidental would imply, signify, or result in the negation of the essential rights or of the possibility of their unrestrained exercise.

On the other hand, human rights have a moral dimension with two meanings: one that is abstract and the other that is practical. As an abstract morality they signal and point towards an ontological condition, that is to say, to the condition of being and not of existing or of acquiring. In that sense, they appear as a non-temporal and eternal quality. It is from this abstract morality that it can be said that every individual for the simple and basic reason of being human is automatically endowed with a series of inalienable rights. The state of being human is condition enough and the only requirement for the entitlement of rights. The adjective "human" is a double claim to universality: through membership to the community of humankind and through the recognition that the membership to

that community is based solely on individuality. In this way, the abstract dimension of morality universalizes human existence; humanity becomes an inclusive totality, a quality shared by all human beings. In this moral dimension, it is this potential for universality of the human condition what is named and qualified, what is conserved and defended.

As a practical morality, human rights represent a great universal agreement, specified as a series of maxims, which establish the minimum parameters of the normative regulation of the social relationship between national states and their populations. They appear as a discourse that seeks to be constituted, by recognition and world consensus, as the central spirit and criteria for interpreting the actions and responsibilities of states, and as a guide for governmental procedures and policy implementation of nation states, regardless of the political system that has been adopted or is prevalent in each country. In this sense, they are constructed with the capacity to sanction and evaluate state performance as appropriate or inappropriate, as reasonable or unfounded, and to denounce whenever it results in the infringement of the rights of particular individuals and of groups of individuals that are constitutive of civil society.

At this level, the questions that are trying to be answered are: How can we guarantee that even in the most remote part of the planet the rights of all human beings are fully recognized? How can we assure that the rights of all human beings will be respected at all times? Practical morality, therefore, concentrates on the unfolding of the abstract precepts into legal forms of regulation and accountability. The possibility of translating universal frameworks into specific

laws and regulations can be conceived as the transition from an agreement of good will to the foundation of a practical will, where it is possible to create concrete legal and political instruments able to assure the unconditional respect of rights at all levels and dimensions. Practical morality is fundamentally translation of abstract morality; it is legal and political reason.

The Universal Declaration of Human Rights elaborated by the General Assembly of the United Nations and proclaimed toward the year of 1948 (only two years after the end of the Second World War), constitutes the most complete and contemporary form of that practical morality.

No matter how one chooses to define human rights, they always appear to be the social product of three interconnected processes: entitlement, recognition, and exercise. The concept of human rights always implies social relationships, because it requires of three interconnected processes: the process through which entitlement is made possible, the process through which entitlement is recognized, and the process that enables the exercise of those rights to which every individual is entitled and that are socially recognized. These processes reveal, however, interesting contradictions. While entitlement is a process that occurs at an international and discursive level, recognition combines the power of international organizations and the power of the nation state. Without a certain level of congruency between these two levels of power, recognition does not happen. Exercise, in turn, presupposes entitlement, and requires recognition but it is always dependent on the specific national context, on the patterns of the

distribution of wealth, and the systems of social inequality that structure social relations within those contexts.

### **1.3 GROUNDING HUMAN RIGHTS: UNIVERSALITY AND FOUNDATIONS**

#### **1.3.1 The Problem of Universality**

As an idea, natural rights precede human rights. The history of the human rights, in that sense, cannot obviate the history of the idea of natural rights. The first coherent and complete formulation of natural rights is as old as the own formulation of natural law in Greek philosophy and Roman jurisprudence. But that the concept of natural rights was not born with modernity, does not imply that its conceptualization in antiquity would have essentially the same content and jurisprudential importance of the proposals that emerged during the Renaissance and were consolidated during the Enlightenment. It is only under a modern interpretation that natural rights become human rights (Freeman, 1994; Palumbo, 1982; Robertson, 1999).

A theoretical reconstruction of the concept of human rights, then, would entail going back to the own history of the idea of natural rights, and would be confronted with at least two possible starting points. The first one could find the elementary origins in old Greek thought and in the emergence of Roman jurisprudence. It would probably imply a detailed analysis of the thought of the Stoics, their place in the Hellenic period of Greek philosophy, their recovery of Plato and Aristotle's philosophy, and their particular interpretation of logos as a rational principle that governs the universe. Also, it would examine the significant conceptual and practical impact of stoicism on Rome, but in particular over the



ideas of rights, legislation, politics and literature, and its center role in the development of Roman philosophy of law (Minogue, 1979; Palumbo, 1982).

The second starting point, in contrast, could trace the modern origins of human rights in the secular and humanist conceptions of the Renaissance and their definitive challenge to medieval conceptions and explanations of the world and social relations. The analysis could be centered on the process of the secularization of society and of thought that created the appropriate conditions to conceive new theoretical foundations for natural rights. This pervasive, profound, and radical process allowed, on the one hand, substituting the idea of a universal reason that organizes and governs everything (Stoic logos) for human reason as a principle for explanation and judgment, and on the other hand, the possibility of rejecting theology as a logic in legal argumentation and justification (Bobbio, 1990; Freeman, 1994; Robertson, 1999).

Whatever starting point one might decide to take in reconstructing the conceptual history of natural rights, it seems crucial to recognize the presence of three central elements: 1) that Greek and Roman stoicism played a founding role; 2) that the Stoic conception of one universal governing idea was transformed into God and divine wisdom during the medieval period, and 3) that in the beginnings of modernity there was a paradigmatic change in the forms of conceptualizing and justifying the moral and legal dimensions of life.

With the secularization of society and the decisive ruptures with old social cosmogonies, which occurred throughout the Renaissance and Reformation periods, the first chapters of classic liberal thought and of modernity as the origin

of a new concept of natural rights were written. It is on the basis of this process of deep ideological, cognitive and normative transformations that I find that the argument of a paradigmatic change can be sustained.

I am referring, fundamentally, to the paradigmatic change that took place when the divine and God were substituted for the idea of Nature and of "naturally human" as fundamental sources of the rights of people. The source that provides human beings with rights to act, to obtain, to possess, to desire was moved from a celestial narrative to a worldly narrative, to a narrative that was no longer outside the reach of human will but one that appeared more mundane and accessible to humans.

That paradigmatic change, however, did not only mean the substitution of one source of explanation for another, but it also implied a transformation of moral justification itself. When Divine Power constitutes the source of all rights, it is the interpretation of the word of God, and the translation of God's will what ultimately renders life to the human condition. In contrast, when the source is identified in Nature and coming from the natural, historical, and social existence of individuals, when the source appears tangible and earthly, the definitive introduction of reason and logic, as conceptual procedure, will redefine completely the process of justification.

Once the skies were lowered to the earth and theological reasoning was substituted for human reason, the concept of natural rights are to be explained and justified by searching for the essence of human beings, of humanity on Earth, and on the basis of the laws of human nature. After these profound transformations

took place the substantial problem for moral justification, for the explanation of entitlement and the distribution of benefits will depend on discovering the laws of human nature, history, and society. The emergence of the modern concept of rights is marked by this new rationality that is based on truth claims about the essence of humanity, society and history, and it is linked to the emergence of nation-states and the transformation of the political relationship between states and their citizens.

According to Norberto Bobbio, the process can be explained by the

overturn in the relationship state-citizens, characteristic of the formation of the modern state: from the priority of the duties of subjects to the priority of citizen's rights, to the different way of looking at political relations, no longer prevailing from the sovereign's point of view, but prevailing from the citizen's point of view (1990, p.15).

Human rights share with natural rights, civil rights and national rights the same cradle; they share the fact of being products of liberal thought and of having been developed at the same time of the unfolding of modernity, of the modern nation-state and in the context of the emergence and consolidation of capitalism (Hirschmann, 1992; Marshall, 1950; Turner, 1986, Van Gunsteren, 1978). At the same time, they share the same problems associated to the processes of moral justification, where the demand for universality becomes the center of the debate.

The word "rights" has usually been partnered by an adjective that indicates the supposed source of the rights. In the early modern period, we find ourselves dealing with "natural" rights, and in more recent times it has become the practice to talk about "human" rights. The force of the word "human" here is to indicate that the rights in question are those we believe to be an essential part of a properly human life (Minogue, 1979, p.4-5).

The argument of Minogue directs our attention to the source of rights as the same attributes that provide not only a descriptor of the right, but rather defines its universal capacities. From this perspective, the source is defined by the basic condition of being a human being and the universal capacity of human rights will depend essentially on how boundless the definition of being a human is. In other words, if we were to find or discover the basic characteristics, the most fundamental qualities that define all human beings as such, we would be capable of proclaiming those as the universal foundations of human rights. This type of argumentation is known as foundationalist or essentialist because it presumes a centerpiece, a core, and an essence for all things, actions, and beings. From this perspective, the key of the reflective process is to be able to discover or determine this "essence". In order to argue for its universal existence, an "essence" that is boundless and therefore can transcend the specific contingencies of historical time and the contextual particularities of social space, has to be discovered or determined.

Essentialism frequently appears opposed to forms of thought that are known as contextualists, because they offer partial and relative solutions to the problem of universality. Cranston's interpretation of the relation between rights and the implied morality in legal frames is a good example of this perspective.

When we speak of a right we are not only talking about the facts of a positive legal system, and it is a distortion of language to pretend that is so. The word "right," by definition, means not only a "*lawful* entitlement," it also means a "*just* entitlement." We all of us speak of our moral rights as well as legal or

positive rights. Indeed, the most common use of the word "right" is both to make a claim and to assert, in making that claim, that one is morally entitled to do so (Cranston, 1979, p.19).

The intention of tying the "legal" to the "just" suggests a reasoning that wants to argue that behind all systems of law there is always a concept of justice that justifies them. Therefore, it is exactly in that sense that entitlement not only means a legal condition but a just one as well. From a theoretical perspective, the first implication is that there is no need for moral justification because the moral stand, and the moral definition of rights is inherently part of all legal systems; the logic of a system of law and the set of assumptions over which it is constructed will provide the basic elements of the moral dimension as well.

But there is also another implication that has to do with the anchoring of the concept of fairness or justice to specific systems of law, and that works against proposals of moral justification with a universal pretension. What is defined as fair in a context, that is in a system of law, is not necessarily fair in another context. Or, from a different point of view, each system of law makes certain assumptions about fairness and works with its own concept of justice that is singular to its logic and its goals, and these can be easily in direct opposition to other concepts of justice and assumptions about fairness. Because the moral dimension of rights is seen as part and parcel of the system of law, principles of fairness are contextual and relative to that system, and cannot transcend their historical and social limits or have any universal claims.

It is within the boundaries of the argumentative polarity between an essentialist and a contextualist position that Jack Donnelly, as well as Leslie John Macfarlane, reflect on the concept of human rights and decide to face the problem of universality.

Although both authors coincide in distinguishing two fundamental realms of analysis, the moral and the normative or legal, the way they argue the universal character of human rights and present the criteria for their universal validity is quite different. While Macfarlane circumscribes the criteria for universality to the problem and definition of entitlement, Donnelly builds his argument proposing that there are minimum and sufficient elements in each one of the analytic terrains to be able to speak of two types of universality, a moral and a normative one.

Macfarlane starts by defining that: "Human rights are those moral rights which are owed to each man or woman by every man or woman solely by reason of being human" (1985, p.3).

There is no room for doubt in Macfarlane's definition of human rights; these are moral and their realization is possible by a generalized yet individual action: the singular act of recognizing that every human being is entitled to human rights. The introduction of the "moral" as a qualifier in the own definition of human rights eliminates all possible space for multidimensional speculation. For Macfarlane the "moral" is not a dimension of human rights; morality is the core of the definition and is absolutely vital to any effort to conceptualize them. Yet, at the same time, their expression and recognition are made possible by means of individual social interactions. The existence of individuals presumes a moral

contract, where a sense of essential reciprocity assures that the acknowledgment of individual rights is at the same time the recognition of those same rights in others. This mechanism of individualistic entitlement and recognition completely excludes the social realm as having any significant role in this process. While this alternative might have the virtue of pointing out the need for all individuals to recognize human rights as a prerequisite to their extensive respect, neglecting to identify the importance of social institutions (in particular the state) in the processes of entitlement results in a perspective that is politically naive and sociologically frail.

The explicit reference to morality in Macfarlane, becomes implicit in the "minimalist" definition proposed by Donnelly. "If human rights are the rights one has simply because one is a human being, as they usually are thought to be, then they are held 'universally,' by all human beings" (1989, p.1).

It is from the presumption of an implicit but pervasive moral agreement where Donnelly will derive the universality of rights, in a kind of tautological reasoning: if rights "exist" for all, then they will be possessed universally by all. The general recognition of human rights is what grants them "existence", and for Donnelly this implies, in one way or another, a moral agreement that is universal. It is clear that this way of approaching the moral dimension avoids having to present arguments that would anchor or offer any foundations to the claim of moral universality. To this route of "moral" argumentation he will add a pragmatic dimension:

Human rights in the contemporary world are universal in another sense: they are almost universally accepted-at least in word, or as ideal standards.

All states regularly proclaim their acceptance of and adherence to international human rights norms, and charges of human rights violations are among the strongest charges that can be made in international relations. Half the world's states have undertaken international legal obligation to implement these rights by becoming parties to the International Human Rights Covenants, and almost all other nations have either signed but not yet ratified the Covenants (the United States is the most prominent in this group) or have otherwise expressed approval of and commitment to their content (1989, p.1).

Donnelly's added dimension, from which he will also derive universality, is based on a de facto political situation that has a strong practical intention and that deserves some comment. Considering the difficulties of producing agreements on the grounding criteria for human rights, the appeal of a pragmatic stance is to be able to move beyond the complexities of that debate and to advance an agenda for their protection. It makes a call for action in light of and beyond profound theoretical disagreements between perspectives. Political action benefits from a practical stance because it avoids bringing mobilization to a halt while theoretical issues are being "solved". But this can be done through other mechanisms without having to force processes of argumentation. Instead, this position decides to find a source of universality where there are only political agreements between some nations.

I see at least two dangerous consequences from this pragmatic position. Perhaps the most obvious one has to do with its logic. To argue that human rights are universal because there is a political agreement in place implies that all political agreements are in essence universal because they are based on shared values and interpretations. If there were a social realm of interaction in which it is unwise to assume this, that would exactly be politics. Political decisions are based



on strategic rationality; as a nation it could be in my best interest to sign an international agreement on human rights, but this does not imply that I will (as a state) do everything in my power to entitle, enforce and protect them within national boundaries. In fact, it cannot even be assumed that signing an international document on human rights means a common interpretation, between the signing parties, about their moral and political value. Universal validity cannot be derived from national treaties, because political interactions are ruled by strategic purposes and do not require substantive agreements or common held beliefs.

The other problem has to do with the implications for theoretical debate. The pragmatic preoccupation of Donnelly's proposal has the virtue of favoring mobilization and action, but it is problematic because it is actually in detriment of theoretical advancement. By sidestepping the issue of universality at the theoretical level and suggesting a practical solution, he is actually suggesting that the theoretical debate is basically unnecessary to the claim of universal validity. Even if at this point it seems extremely difficult to imagine a possible solution to the theoretical debate, that in itself cannot constitute an argument for abandoning substantive reflection on the issue. His proposal is unable to resist the temptation of engaging a pragmatic fallacy: trying to solve a substantive problem with practical arguments.

Although also pragmatic, Macfarlane doesn't find it acceptable to derive universality from the possibility of generating international treaties or agreements

and interpreting these as processes of widespread acceptance. In contrast, Macfarlane turns to the argument of entitlement.

Claims to universal rights must be seen as claims to which one can establish a universal entitlement, rather than claims which have universal support. Universal rights necessarily preclude any discrimination or exclusion, whether on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (1985, p.6).

Even from a pragmatic perspective, both positions have to face sooner or later the political and sociological problems that profoundly challenge both "international accords" and "general processes of entitlement" as solid sources of universality. On the whole, those problems can be understood as anti-universal forces that act directly against the efforts of pragmatists to claim that human rights are universal, based on practical reasoning.

The definition of membership, the political composition, and the institutional dynamics; the normative differentials, and the power relations among those national states that compose the United Nations constitute a group of anti-universal forces that are constantly putting at risk and questioning the legitimacy of international agreements and the adoption of resolutions. The context in which international agreements are designed, structured, proposed and passed is basically determined by power differentials between nations that have been made institutional procedures. How can we argue that international agreements can be sources of universality when they are not even based on simple forms of democratic procedure?<sup>4</sup>

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<sup>4</sup> I will come back to this problem later in this chapter.

While the universal character of entitlement seems to be secured in the abstract definition of being human, this swiftly disappears when we confront the social condition of human beings. The enormous social and political distance that exists between the entitlement to human rights and the real possibilities of their enjoyment, permanently questions the relevance of the abstract definition of entitlement for the lives of individual human beings living in specific social contexts. Formal entitlement and real exercise is mediated by social inequality. While abstract entitlement applies equally to all human beings, the possibilities of enjoyment and exercise are determined and distributed unequally to all members of specific societies. Abstract entitlement can preclude all forms of unequal consideration and treatment, but the possibilities of exercise and enjoyment are trapped within the confines of the structure and system of opportunities, which individuals are obligated to face everyday of their lives. In this crude way, social inequality constitutes another group of anti-universal forces.

Article 2 of the Universal Declaration of Human Rights (1948) introduces an admonition: all the rights described in this Declaration are to be recognized "without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (United Nations, 1979, p.148). The admonition is trying to establish standards of equality as a fundamental consideration for entitlement, because without equality in the processes of entitlement rights for all human beings would be transformed into privileges for some human beings. However, at the same time, it is making an explicit recognition of the fundamental reality that those differentiations,

translated into social inequalities, would not only make crucial distinctions in the entitlement of rights, but would in fact undermine the process in its entirety.

To be able to guarantee universality, the definition of human rights has to make sure it precludes any form of social differentiation (that has a potential for creating forms of inequality) as criteria or conditions for granting entitlement. At the same time, however, it means that different social conditions of existence and amounts of resources are inevitably present and create disturbances, so to speak, in the processes of entitlement to the extent that they are a constitutive part of the context within which individuals live and develop. Universality, understood as equal entitlement, can only be secured in the domain of an abstract definition of human rights; nowhere else is it possible to preclude social inequality. Individuals and groups of individuals are "born into" certain forms of entitlement and possibilities of exercise because the realms in which these rights materialize are unequal.

The political and sociological conditions, that I have identified here as anti-universal forces, are not only a reminder that the pragmatic route for arguing the universality of human rights is problematic, but I believe they profoundly question this alternative as viable for the task at hand. From a political and sociological perspective, the practical sources of universality for human rights are undermined, in the practical realm, by the anti-universal forces of history and social context.

### **1.3.2 The Problem of Foundations**

Linking universality to the definition of entitlement (Macfarlane) or to the widespread acceptance of international declarations (Donnelly) can also be interpreted as a conceptual recourse to escape the problems that are associated with essentialist or foundationalist positions. By making pragmatic arguments about the universal character of human rights, both Macfarlane and Donnelly avoid having to present philosophical or theoretical argumentation about the need for human rights and to confront competing perspectives in this terrain. But to avoid confrontation with different moral interpretations and discursive elaborations can imply and mean, simultaneously, avoiding all processes of moral justification. Under the pretense of escaping essentialist reasoning via normative pragmatism, these positions end up renouncing to the possibility of reflecting on the philosophical foundations of human rights. These pragmatic perspectives seem to be equating moral justification with essentialism or foundationalism, and therefore do not see any possible reflection or debate that can escape the traps of the thought process, reasoning, and conclusions of those positions.

Other authors argue the universality of human rights from an entirely different position (Lukes, 1993; Rorty, 1993; Sjoberg, 1996; Turner 1993). First, they refuse to renounce to philosophical argumentation and theoretical deliberation for fear of falling into essentialism or foundationalism. Second, they face the problem of the philosophical foundations by debating competing perspectives, and putting forward their own proposals. Third, they decide to run conceptual risks when structuring their thought processes and explaining their

criteria for grounding human rights. From this group of authors, and for the purpose of reviewing the problems with the elaboration of foundations, I would like to turn my attention to, what I believe is the most comprehensive argumentation recently set forth.

Bryan S. Turner proposes the inherent frailty of the human species as a route for justifying the universality of human rights. Through a reinterpretation of Gehlen's anthropological philosophy, Turner seeks to substitute natural law as a foundation of the theory and philosophy of human rights for two interlinked concepts: the ontological frailty of human beings and the precariousness of social arrangements and institutions. The author will try to convince us that the relationship between these two concepts is not only dynamic and dialectical, but also essentially paradoxical.

Human beings are frail-he argues-, because their lives are finite, because they typically exist under conditions of scarcity, disease and danger, and because they are constrained by physical processes of ageing and decay (Turner, 1993, p.509).

Now then, it is exactly because of this condition of ontological frailty the reason for which social institutions have been created. Social institutions are designed to protect individuals from the threats of their environment and from their own existential frailty. However, Turner notices an inherent paradox.

The institutions which are designed to protect the human beings-- the state, the law, and the church in particular-- are often precisely those institutions which threaten human life by the fact that they enjoy a monopoly of power (Turner, 1993, p.510).

The concept of human fragility has, however, interpretations opposed to the one offered by Turner, and that are problematic for justification and debate, in

general. These interpretations are related, in my opinion, to the modern origin of the concept of natural rights, as well as to the influence of utilitarianism and positivism throughout the 20<sup>th</sup> century. In the search for the essential characteristics of human nature the argumentation and debate has been moved to the domain of biology and the natural sciences, under the illusion of being able to discover stable and immutable qualities of our human existence. Not only are these analytical movements completely foreign to the forms of moral justification in the tradition of Greek philosophy and Roman jurisprudence. These positions are also troubling because they remain unaware, or would rather deny the importance, of contemporary research that recognizes the crucial differences between realms of argumentation and types of validity claims: the practical-scientific, the moral-normative, and the subjective-aesthetic, and that know of the risks and the consequences of subordinating an argumentative process of one realm to the logic to another (Dews, 1999; Habermas, 1984; Hoy and McCarthy, 1994). To argue a problem of the moral order with a scientific validity claim is to make unrecoverable violence to the own possibility of argumentation; we cannot explain something that belongs to one realm with validity claims from another.

That is what I find to be the fundamental problem of the argument that is justified by using reasons from our biological condition of existence and the peculiarities of our patterns of growth. From this perspective, human beings are essentially fragile because they lack the anatomical and physiological equipment that would allow an early autonomy from their progenitors. This fragility

determines the fundamental and lingering dependence of human beings. Although this route of argumentation might have some undeniable virtues, the perspective suffers the risk of producing myopic interpretations and becoming easy prey of essentialism anchored in biological reductionism.

Explaining the fragility of human beings by comparing their biological equipment and condition to other animals, makes unnecessary abstraction of the condition that ultimately defines and separates humans from other animals: the fact that humans are social beings. Though Turner is sufficiently careful to include in the same definition of fragility the idea of social conditions of existence, by means of the triple concept of resources, distribution and scarcity, he pays excessive homage to that he seeks to substitute as the foundation of human rights: natural law.

While introducing the dimension of the social in the explanation of human frailty, the theoretical force of the concept of social precariousness ultimately depends on the strength of the argument that would claim that human frailty is ontological. In that way, the social domain appears only as an added dimension, but is not made the core of the argumentation or presented as an argumentative perspective. Additionally, the problem of giving human frailty the same weight as an ontological argument is that it fosters an interpretation of social precariousness as a trans-historic phenomenon that leads to pessimistic and politically fatalistic conclusions, erasing the constructive possibility of social and political agency: 'if it is connatural to the existence of human beings, then there is nothing we can do about it'.



In spite of the objections that we can find and the critiques that we can formulate, the importance that the concept of human frailty has for the theory of the human rights resides, I believe, in the implications for the processes of argumentation and justification and the inclusion of concepts and elaborations about justice and solidarity, morality and ethics (see Honneth, 1995). Or to put it in other terms, the central importance is that it brings back moral justification and acknowledges its legitimacy in the search for the philosophical foundations of human rights.

I believe that the theoretical reflection and the moral argumentation on the philosophical foundations of human rights would continue benefiting from an exploration of the possibilities and limitations of the concept of frailty. An alternative, is to outline an interpretation where the ontological character of the concept was definitively liberated from a biological anchorage and moved with determination to the center of the structural tensions between the particular and the general, between the singular and the plural, between uniqueness and commonality, between self and other, between personal identity and social identity. From this perspective, human being's frailty could be explained by means of the complex interconnectedness between individual and society. Both, the processes of individuation and the constitution of individuals as autonomous beings are intimately tied to the social condition of social groups. It is through the socialization process that individuation is carried out. The socialization processes and those of individuation are fundamentally interconnected, are tightly interwoven (Habermas, 1990, Chapter V, and 1992, Chapter 7). That is why,

while intersubjective relationships produce the necessary conditions for the reproduction of social networks, the reproduction of social networks produce the elementary conditions for the formation of identity, and personality.

If we transfer the analytical axis and justification to the complex relationship between the individual and the social, we can avoid moving the moral argument away from the social dimension that properly defines human beings. At the same time, we return to individuals, groups, and social movements their political agency, that is, their capacity to intervene, to modify, to subvert, and to transform the systems and institutions that instead of assisting, and protecting the fragility of human existence, they are constantly threatening the life itself of human beings as members of societies.

#### **1.4 THEORETICAL REFLECTION AND THE POLITICAL IMPLICATIONS OF CULTURAL RELATIVISM**

Once outlined the argumentative horizons and the problems that universality of moral judgments has for the philosophical foundations of human rights, I find it appropriate to raise the question of the political and practical implications of theoretical reflections on these issues.

Ultimately, the perspectives that defend the universal potentiality of the discourse of human rights are founded in the conviction that reason is universal and that the local, community, regional, national, ethnic, religious and linguistic uses do not divide reason in multiple forms of rationality.

What counts in any instance as a good reason obviously depends on criteria that have changed in the course of history (including the history of science). The context-dependence of the criteria by which the members of different cultures at different times judge differently the validity of

expressions does not, however, mean that the ideas of truth, of normative rightness, of sincerity, and of authenticity that underlie (only intuitively, to be sure) the choice of criteria are context-dependent in the same degree (Habermas, 1984, p.55).

The fact that different forms of interpretation exist of the relationship individuals establish in the realms of the objective world, the social world and the subjective world, does not cancel the basic truth that all the different types of interpretations are based and developed on the universal possibility of carrying out an interpretation.

In the international debate on human rights, universalistic perspectives have been opposed by cultural relativist positions.

The critique that cultural relativism has leveled against the universality of human rights has been constructed around two axes. First, they have evaluated the extent to which human rights have been protected and respected around the world and the degree to which international organizations have been able to prosecute and punish their violations, and use these criteria to argue not only the limitations in acceptance, scope, and legal enforcement, but basically the non-universalistic nature of human rights. This analytic movement and the arguments that follow, lack conceptual support because they face a supra-legal problem with approaches that are proper to an analysis of legal application; because they use arguments of a pragmatic order to evaluate a problem of a moral order, doing profound violence to the possibility of debating about the universal potentials of human rights and the required processes of justification.

Second, cultural relativists believe that the core conceptualization of human rights is ethnocentric. The central argument is based on the idea that the

Universal Declaration of Human Rights was constructed on an, implicit or explicit, ethnocentric definition of human beings, social relations, and moral standards. That the definition of human rights, as we know them today, is structured on moral precepts of dignity, respect, and freedom that are widely shared by western cultures but do not have the same importance or interpretations for non-western cultures and other social contexts.

I believe that the critique of ethnocentric positions has important virtues that should be defended, since it contributes to the formation of multidimensional perspectives that are inclusive and de-centered. But to transform a critique of an apparent ethnocentric position into cultural relativism is, in my opinion, theoretically questionable and politically suspicious. On the one hand, it is mounted on very doubtful assumptions and, on the other, it has dangerous political consequences.

***Questionable assumptions:***

- a) The diverse world cultures are relatively isolated from each other. Each one is impermeable to the existence and influence of other cultures, and to their different frames of interpretation.
- b) The interpretive distance between different cultures is such that it is impossible to establish exchanges, discussions, and debates about cultural paradigms and to build discursive-political platforms for inclusive agreements across cultures.

- c) The fact that cultures are so different and that they hold such dissimilar frames of interpretation reflects the existence of different ways of conceiving, different forms of rationality.

***Political consequences:***

- a) Protected by international law that grants rights of sovereignty to nations, and on behalf of national concerns and ideologies, governments all over the world have committed abuses and have systematically violated human rights.
- b) Cultural relativism has served as an excuse to the exercise of discretionary and violent forms of power, and to authoritarian forms of national government.
- c) Arguing respect to different cultural traditions, respect to different forms of interpreting life and social relations, cultural relativism ends up also defending practices (at a local, community, regional and national level) that are clearly in contradiction with the general spirit and the logic of the international agreements on human rights.

In essence, cultural relativism has been used politically to advance the purposes of certain powerful social groups, in specific national contexts. It is used as a discursive recourse to fend off critique, dismiss scrutiny, and avoid evaluation. It has allowed certain national social groups to hide behind the arguments of cultural relativism and elude having to explain the reasons why they act the way they do, to justify their actions, and expose their positions to the consideration, debate, and critique of international cultural, social, and political communities. This problem becomes absolutely dramatic when the groups that

hide under the mantel of "cultural difference", protecting themselves from international critique, are oppressive groups that exercise specific powers in the context of their communities and societies, to the disadvantage of other groups and at the expense of their integrity and humanity.

The problem is far from having an easy solution. Accusations of ethnocentrism and of imposing ways of thinking, interpreting and judging have created true havoc to international organisms and have, at certain points, paralyzed the activities of movements whose goals are to protect and defend human rights all over the globe.

I do not believe that philosophical reflection, theoretical debate, or the construction of social theory require of practical arguments to justify their validity. It is only in the world of theory and of theoretical discussion where it is possible to thematize and problematize certain aspects of our existence and of social life. Those aspects, for example, that are not vital for the daily life and practical needs individuals. This particular quality and its crucial contribution to the formation of critical and plural thought, make theory a practice (Calhoun, 1995; Habermas, 1973; Kellner, 1989; McCarthy, 1978). However, to this very day, the conceptual problems associated with cultural relativism and its practical and political consequences constitute a very clear indication of why theoretical reflection (about the possibilities of universal validity and foundations) is so important. The legitimacy of the international movements that are mobilized to implement the general standards and protect human rights around the world demand it.

### **1.5 ON THE ADVANTAGES OF A PROCEDURALIST APPROACH**

Regarding the analysis of human rights and of the problem of universality, I believe it is an imperative to carry out multidimensional approaches, moving simultaneously in the different analytic spheres of ethics and their corresponding reflections about justice. In this way, we would intervene in substantive debates about the philosophical foundations of human rights, concerned (at the same time) with the political consequences of what is being debated, and making sure that our forms of argumentation are made with the possibility of reaching an agreement in mind, and based on an intersubjective rationality.

However, is it possible to intervene in substantive debates about the philosophical foundations of human rights without falling into the problems of essentialism or of essentialist positions?

I believe that the development of substantive arguments on the philosophical foundations of human rights is not only necessary, but also absolutely vital for the advancement of knowledge in this area. Nevertheless, I also believe it is important to recognize the conceptual risks involved. To intervene in the substantive debates on the foundations of human rights with philosophical elaborations, theoretical proposals, and moral arguments always generates the risk of producing essentialist claims. In the search for foundations, there is a strong temptation of "finding" what essentially explains human nature, thus requiring and justifying the presence of a normative regulation of behavior like "human rights". Considering these characteristics as deep-seated and trans-historical turns a temptation into an essentialist argument.

However, not all interventions in substantive debates become, for that mere fact, essentialist in nature. For the risk to become an essentialist position it requires, in my opinion, of a conceptual movement of exclusion, that has profound political implications.

An exploration that claims to have found the essence of human nature implies, from a construction of discourse perspective, a simultaneous assertion of exceptionality and an exclusion of other claims. A claim about the essential qualities of human beings is a claim that seeks to "monopolize knowledge," so to speak of the human condition, for if it has found the essence all inquiry must cease!

Furthermore, if the legitimacy of the claim and the widespread acceptance of the argument requires of a hegemonic imposition rather than of a process of interactive justification, then, the claim will be built on the possibility of canceling other points of view, other forms of argumentation. From this position, debate is not a dialogical process of intersubjective rationality, but a war of opposed perspectives out of which only one should emerge as victorious and, at least, one as defeated.

Essentialist positions not only do not benefit from exchange and debate, but also actually preclude the existence of other claims that are as legitimate as the claims they are intending to forge. To the extent that competing perspectives represent the annihilation of essentialist claims, essentialism cannot grant legitimacy to other interpretations, and other theoretical positions; their existence signifies its negation. Therefore, the conceptual exclusion of other interpretations



predates the possibility of exchanging and debating. The conceptual exclusion can be found in the definition of problems, the elaboration of arguments, and the design of the whole process of moral justification.

To be able to escape essentialism, all interventions in substantive debates and their proposals should be formulated knowing that the validity of their postulates and the legitimacy of their approaches can only be recognized and ratified by means of processes of exchange, discussion, and debate in appropriate social spaces and under equal conditions and democratic relations. Only then, can we recognize a move from a rationality of exclusion to a rationality of inclusion, which allows for intersubjective understanding.

It seems to me that the debate on the philosophical foundations of human rights will not find horizons of constructive resolutions until it is confronted, simultaneously, in its different dimensions: recognizing the importance of concrete political actions, debating substantively, and making sure that all agreements, normative formulations, and debates occur in the context of democratic procedures of intersubjective argumentation and justification.

This is where, I believe, communicative or discourse ethics has a lot to offer (Apel, 1990; Benhabib, 1992; Benhabib and Dallmayr, 1990; Habermas, 1990 & 1993). The strong dialogical approach, the concern about the conditions under which argumentation takes place, and its demand for intersubjective rationality provides sound insights and solid guidance on how to face the challenges of both the problems of universality and foundations of human rights.

Communicative ethics –Benhabib explains– is a deontological theory to the extent that it constraints conceptions of the moral in accordance with

certain restrictions upon procedures of moral justification. It is not “neutral,” either in the sense of having weak philosophical presuppositions or in the sense of being indifferent vis-à-vis competing ways of life. Yet it is reflexive, it allows the non-dogmatic questioning of its own presuppositions; it is pluralist and tolerant, in that it promotes the coexistence of all ways of life compatible with the acceptance of a framework of universal rights and justice. In this sense in communicative ethics as well, the right is prior to the good but the right itself promotes a vision of the good life which cherishes the norms of universal respect and egalitarian reciprocity (1992, p.45-6).

These contemporary proceduralist perspectives have frequently been charged of being formalist. The implication is that they are only worried by the formal aspects of communicative situations and the formation of transitive consensus. However, the meta-ethical proposals when interpreted properly –as Benhabib argues– have crucial substantive implications and consequences for all dimensions of life. “Communicative ethics promotes universalist and postconventionalist perspective on all ethical relations: it has implications for familial life no less than for the democratic legislature” (1992, p.39).

However, the relation between substance and procedure has another dimension of meaning that sets this perspective apart from other approaches to moral reasoning and justification.

As procedural theory of moral argumentation, communicative ethics is based on certain *substantive* presuppositions. In my view this is unavoidable. All procedural theories must presuppose some substantive commitments. The issue is whether these substantive commitments are presented as theoretical certainties whose status cannot be further questioned, or whether we can conceive of ethical discourse in such a radically reflexive fashion that even the presuppositions of discourse can themselves be challenged, called into question and debated (Benhabib, 1992, p.74).

In fact, I would argue that this reflexive quality, that is embedded in the proceduralist perspective of discourse ethics, works as a sound mechanism that implodes essentialist reasoning and minimizes the risk of falling into essentialist thought processes.

Ultimately, who can validate the result of a substantive discussion or debate about the universality or the philosophical foundations of human rights, without the procedural conditions that can assure that all of those that intervene do so in equality of circumstances and that what defines the last content of a resolution or agreement (even when partial and transitive) is the product of a communicative process of intersubjective argumentation among equals?

#### **1.6 WORLD SYSTEM, UNITED NATIONS, AND THE UNFULFILLED UNIVERSAL CAPACITY OF HUMAN RIGHTS**

Once presented the central pieces of my position in regard to the debate on the philosophical foundations of human rights, I would like to conclude this chapter by risking a reflection, that I believe might contribute to the advancement of our understanding of the potential universality of human rights as a practice and a discourse.

By extending the insights of discourse ethics into the institutional domain of human rights, I argue for a sociological critique of the operation of the United Nations, of the system of differential powers among nation members, and of its capability for the formation of international agreements and accords. This procedural dimension becomes crucial for two reasons. On the one hand, it allows for an evaluation of the United Nation's possibility of being a participating agent and institution in the development of a just and democratic international system.

On the other, it enables us to recognize the institutional possibility of creating overlapping consensus and their degree of international legitimacy. If we are willing to understand the contemporary definition of human rights as a historically grounded and transitory consensus, this procedural dimension reveals itself as a crucial yet unrealized capacity for universality.

If some international process can be linked to the development of human rights in the 20<sup>th</sup> century it is that of globalization. Although the concept was introduced to suggest deep changes in the forms of production, the transformation of international economic relations and, later on, the progressive expansion of financial capital at an international level, as well as crucial alterations in the relationships of exchange between national markets, today the term globalization suggests uses beyond the characterization of phenomena linked to relations of production and exchange. Indeed, the theoretical proposals and studies developed by Wallerstein (1979, 1984, 1991) have intervened systematically not only in the investigation of the effects of economic globalization in other dimensions of international life, but of the parallel developments and interconnected changes in politics and culture at a global level.

In that line of thought and following a theoretical development proposed by Robertson, Bryan Turner intends to understand the institutionalization of human rights, phenomenon that began with the formulation of the Letter of Intentions of the United Nations, as a central aspect of the social process of globalization. Furthermore, based on a work of Weissbrodt, he takes the argument

even further by arguing that human rights could represent the first universal ideology in the world (1993, p.450).

Although it is clear that Turner's intentions are to offer the first conceptual building blocks of a contemporary sociology of rights, it is unfortunate that he did not explore the conceptual linkages between the social process of globalization and the possible existence of a universal ideology (human rights), beyond those two statements. It seems to me that such an exploration could open new analytical horizons and lead to very fruitful proposals.

The concept of rights presupposes the concept of state of rights. In this same sense, citizenship rights presuppose a state of civil rights. In the same way that the development of a state of rights represents a previous and parallel development to the emergence of the modern state, the development of an "international state of rights" represents a previous and parallel development to the possibility of the emergence of a modern state that is not national but international.

Human rights, insofar as they are extra-political or supra-societal rights which have their legitimacy beyond the state, are crucial in protecting individuals against state violence, or at least in providing the normative grounds on which individuals could be protected against state violence (Turner, 1993, p.510).

In this way, the International Declaration of Human Rights, its corresponding discourse, and the design of the concurrent normative regulations would constitute the international state of rights. The international modern state, in turn, would be comprised by the United Nations, and its corresponding institutions and organisms.

A critical examination, from a sociology of nation-states and bureaucracies perspective, of the institutional existence and political functioning of the United Nations would reveal that, like in all nation-states and their institutions of governing, there are discretionary, situational, and systematic forms of exclusion and marginalization of certain political positions, their discourses, and voices, regardless if these are recognized as members, groups or associations. In other words, we would find systems that are institutionalized (or not) of exercising power and of distributing privileges and disadvantages among countries, as well as specific forms of constructing national group hegemonies. Phenomena like the unequal distribution of the right to vote and to exercise a veto between members; the internal system of hierarchies among groups, organisms, and committees and their consequent effect on the formulation of agreements and declarations; the forms of obtaining economic resources, and the political use of funds and contributions, are all manifestations that clearly speak about an institutional system that is far from being democratic. Paradoxically, this same system of institutions has the normative ability and exercises its international right to qualify, to sanction, and to evaluate if nations around the world have governments and political systems that are democratic, and the degree to which their forms of governing are democratic.

The cognitive pretense of this route of reflection would be to anchor the study of the Organization of the United Nations and of its operations in the structural and systemic analysis of the institutions of power, the internal normative standards and procedures, and the correlation of forces that is in

constant flux. The objective would be double, on the one hand to liberate the inquiry from instrumentalist's interpretations: "The United Nations is only one more instrument of domination and control that powerful countries exercise over the rest of the world." On the other, to liberate it from utopian-catastrophic interpretations: "The United Nations is an impossible utopia; the original idea is without a doubt valuable but the unequal political and economic power in the world make that a project that is virtually unrealizable." It would be, in sum, a way of seriously exploring the democratic possibilities of the United Nations as a supra-national organization and institution, and a space for the construction of international consensus and new political relations.

Another dimension, that is less obviously linked to its internal operation but that has a great impact on the global community at large, has to do with the ability of the United Nations to create legitimate international normative standards, to foster global justice, and to generate a concurrent moral discourse.

One can argue that the definition of human rights after the Second World War, is essentially different from other previous definitions (from the English, American, and French Revolutions), because its specification, delimitation, and establishment was product of a multinational agreement; a product of a process by which we can, today, evaluate the definition from a contextual and procedural perspective.<sup>5</sup> That is, we can analyze the contemporary definition of human rights as contextually relative and historically dependent on the conditions under which the agreement was accomplished. The argument, then, is not based on trying to

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<sup>5</sup> Although profoundly imperfect, because it was founded on the basis of an unequal distribution of political and institutional power, and not on the basis of a democratic exercise of the political will of all nations.

reveal the theoretical differences between the definitions, but on the social and political implications, and especially on the meta-ethical implications that the contemporary conceptualization of human rights is a product of a "relatively collective" process of negotiation and agreement. From this perspective, instead of understanding human rights as lacking a reasonable foundation or in the need for a set of essential, unchangeable, and transhistorical characteristics (as an essentialist argument would want to claim), human rights are presented as a historically specific agreement, fundamentally modifiable, and imperfectly collective.

The contemporary definition of human rights has, in the previous sense, an unfulfilled universal capacity. It is a capacity that is given by the procedural dimension; this is, by the fact and implication that the definition becomes a direct consequence of a collective undertaking, of a general agreement, of an overlapping consensus (Taylor, 1996 and 1999).

The Universal Declaration of Human Rights is a multinational agreement that was made under historically specific conditions, and its level of international legitimacy is in direct relation to the procedures that led to the formation of that agreement and the processes that allowed to reach a particular consensus.

The Universal Declaration was formulated and approved in a context of power differentials and hierarchies between nation members, unequal forms of participation and decision making, and institutionalized methods of exclusion. To the extent that the agreement was not reached through collective deliberation, democratic procedures, and comprehensive forms of inclusion the Universal



Declaration emerged as a partial, slanted, and exclusive agreement. It reflects the pressing needs, interpretations, and notions of those nation members (unequally) involved in the process. At its best, it is a declaration with international and universal pretensions.

The ratification processes (in the 60s and 70s) that have followed the Universal Declaration of 1948 have undoubtedly increased the number of nations that support the initial definition of human rights as espoused by the United Nations (Palumbo, 1982). Additionally, the expansion of the core concepts in 1976 to economic, social, and cultural rights first, and to civil and political rights later has served the purposes of increasing their legitimacy as an international normative discourse.

I agree with Drucilla Cornell "that in our complex world we can only hope for an overlapping consensus on universals if we allow norms of behavior, even as we call them human rights, to be loosened from their connection to Western notions of the individual" (1998, p.169). An overlapping consensus, however, might involve an important challenge or at least a serious critique of the contemporary definition of human rights, and simultaneously of the institution within which it can be potentially fruitful to develop the challenge or critique, if we were to expect any significant and global impact. In our contemporary world, the United Nations as a meta-national institution seems to be the most adequate social space for posing and resolving these challenges, and for negotiating new meanings of a discourse that can claim universality both procedurally and substantively. However, the structure, system, and organization of the institution

along lines of unequal power and privilege disable this possibility, or at best constitute a major roadblock.

Substantively speaking, the current definition of human rights is based on concepts of the individual that seem to be in contradiction with non-Western traditions of thought. Charles Taylor reminds us of how for many peoples around the world Western individualism is ethically undesirable, and how this has created reluctance to accept a model of human rights based on this premise.

[The subjective concept of right] seems to give pride of place to autonomous individuals, determined to demand their rights, even (indeed especially) in the space of widespread social consensus. How does this fit with the Confucian emphasis on close personal relationships, not only as highly valued in themselves but as model for the wider society? Can people who imbibe the full Western human rights ethos, which (in one version anyway) reaches its highest expression in the lone courageous individual fighting against the evils of social conformity for his rights, ever be good members of a "Confucian" society? And how does this ethic of demanding what is due to us fit with the Theravada Buddhist search for selflessness, for self-giving, and *dana* (generosity)?

I believe that in a post-Enlightenment era, a discourse that claims to be universal requires at least of one central condition: to remain open; open to critique and challenge, even when this might entail a move towards constant re-argumentation, re-conceptualization, and re-definition. That is, a discourse that claims to be universal requires to embrace a definition of itself that allows it to move in space and in time beyond the conditions that gave it birth; stagnation is the death of all possible claims to universality. This is the central idea and conceptual richness of interpreting the contemporary definition of human rights as a transitory agreement, as a transitional consensus.

But how can critiques be made if the basic conceptualization is not even conceived as criticizable? How can challenges be posed and taken seriously when the core definitions are formulated as unequivocal statements or undisputable claims? How can alternative interpretations be presented when premises and assumptions are far removed from the possibility of modification and change? How can diverse and different voices be heard when there is no room for plurivocality? How can redefinitions be proposed when the environment of communication is not identified and interpreted as a space for collective deliberation?

Notions and interpretations from non-Western cosmologies and traditions of thought, have not been well received and taken seriously because they challenge not only certain assumptions about the contemporary definition of human rights, but also ideas that are central to the cultural and political identity of the societies of Western powerful nations (Turner, 1988).

As long as the institutional context within which the crucial determinations about the definition of human rights continue to be removed from collective deliberation and democratic procedures of decision-making, the pretension of being international and universal will largely remain unfulfilled.

Unequal participation in the decision making process, allows for certain nation members to become gatekeepers and regulators of what is to be discussed. Power differentials and a hierarchical organization of the United Nations allow certain nation members to have control over the agenda. Thus, challenges to the definition of human rights can be "filtered out" or dismissed as "political

maneuvering". It is the power they hold over the United Nations that grants them a power over the discourse of human rights, as well.

An international community will grant legitimacy to a definition, in fact to a re-definition of human rights if in the process of generating these definitions members of this community are constantly recognized and taken into account as full and equal members; allowed to voice their specific concerns and particular needs; engage in the discussions and debates about the content of the definitions; actively participate in the initial design, elaboration, and final product; and identify and feel represented by the final product of the agreement.

The higher the level of legitimacy an agreement has, the more likely it is to become a normative discourse. Respect for norms and uncoerced compliance to normative standards increases in proportion to the degree of legitimacy they have. This is true for individuals as it is for nations. However, this legitimacy depends not only on the content of what is agreed and established as a norm but, simultaneously, on the form in which the agreement was reached and the norm was established.

The argument is based on a deliberative model of democracy. Seyla Benhabib explains it in the following way:

[I]t is a necessary condition for attaining legitimacy and rationality with regard to collective decision making processes in a polity, that the institutions of this polity are so arranged that what is considered in the common interest of all results from processes of collective deliberation conducted rationally and fairly among free and equal individuals. The more collective decision-making processes approximate this model the more increases the presumption of their legitimacy and rationality (1996, p.69).

As a product of collective deliberations and agreements between free and equal members of an international community, human rights would emerge as a transitory consensus submitable to different and new processes of rational negotiation that would, in fact, transform their definition from one stage of deliberation to another. This is how human rights would acquire full legitimacy, and realize its claim to universality.

Democratic procedure and substantive agreements are intrinsically interlinked and fundamentally interdependent (Cohen, 1996). For the time being we will have to work with the undemocratic and non-deliberative nature of human rights, and their unfulfilled universal capacity.

## **Chapter 2: Reproductive Rights: An Analytical Proposal**

### **2.1 INTRODUCTION: STRUCTURE OF THE PROPOSAL**

The central objective of this chapter is to develop a theoretical reading of the international and contemporary discourse of reproductive rights. My hope is that the perspective and analytical proposal set forth represent a contribution to the expansion and consolidation of the field of study, and renders useful for the analysis and evaluation of the situation of reproductive rights within national contexts.

The chapter is divided in three sections. In the first section, I explore the basic structures of what defines the concept of reproductive rights. From the perspective of the foundation of a field of study, and using a genealogical approach I attempt to reconstruct the central meanings and basic questions of reproduction as rights. This effort has the purpose of establishing some very elementary cognitive boundaries for the field, and identifying some issues that have political and sociological relevance for the analysis of the international discourse of reproductive rights.

In the second section I identify three contentious and problematic areas: entitlement, responsibility, and inequality. From this vantage point I engage the international definition of reproductive rights and assess its virtues and limitations. Both the definition of entitlement and the concept of responsibility have been the most contentious issues of the evolution of reproductive rights. While the definition of who constitutes the subject of these rights has been altered

and changed numerous times, the concept of responsibility has generated a constant debate that, up to this day, remains unresolved. Countries that have chosen not to endorse international covenants on reproductive rights have precluded their citizens, through a normative marginalization, from their protection and enjoyment. Within endorsing nations, however, social inequality is the single most important factor in determining the exercise of reproductive rights. I end the section by arguing that how and even who gets to enjoy and exercise these rights is contingent on the systems of social inequality and the structure of opportunities in these societies.

Finally, in the third section, I develop a normative reading and a sociological interpretation of the process of making reproductive decisions. I start by exploring the assumptions embedded in the international definition and its concurrent discourse. There are a series of assumptions that can be derived and made explicit from the definition and its historical development. However, there are others that are not easily derived and thus have remained basically implicit and unthematized. Yet these are not secondary. I contend that these sets of assumptions are fundamental for the exercise of reproductive rights, both in the private and public realms, and decisive for reproductive decision-making processes. But, what would be the ideal situation and process for making a reproductive decision? Taking Habermas' lead, I use the analytical intention of his "ideal speech situation" to produce an "ideal reproductive decision-making process." Informed by the standards of justice and equality suggested by contemporary human rights and feminist theory, I thematize the required

elements, the key social relations, and the necessary conditions for an "ideal process." Once established the ideal normative, I turn my attention to the sociological dimension. Social structures and social relations represent a permanent jeopardy for the actualization of the ideal normative. I conclude the section (and the chapter) by assessing the disturbances that the ideal reproductive decision-making process suffers when placed in contemporary societies; that is, within social contexts that are structured unequally, and where the prevailing form of social relations is domination. For both the private and the public realms, I identify two main sources of disturbances: power relations and systems of social inequality. I examine the distortions these create to the ideal process, the constraints they impose over individuals and couples, as well as the effects they have on the process of formulating and carrying out reproductive decisions.

## **2.2 REPRODUCTION AS RIGHTS**

This first section can be thought of as an effort to lay the basic building blocks of the analytical proposal. I begin by engaging in an abstract examination of the fundamental components of the discourse of reproductive rights, and will suggest some routes of interpretation of its sociological and political meaning.

### **2.2.1 Charting a Relation**

An utterance with two related conceptual components, like "reproductive rights" (in which one can read the pretense or foundation effort of being placed at the center of a cognitive field), contains conceptual proposals that go beyond a mere intellectual exploration. At first, this means that the projected images, the implied connections, and the conceptual interactions suggested in the one



utterance are neither general nor uncertain. It is not that the connection between two conceptually autonomous universes is being hypothesized (as an utterance in the style of "rights and reproduction" would reflect), but rather that the utterance already implies a selective process of reasoning where false hypotheses and spurious relations have been discarded. That is to say, in the non-theorized utterance of "reproductive rights" previous conceptual work of differentiation and association is already summed up.

In "reproductive rights" we find the presence of two big components and of a relationship of bilateral qualification. On the one hand, "reproduction" as an event or central action is qualified and delimited by the concept of "rights". On the other, "rights" as a social and legal condition confer a specific entitlement, and protect the same event that grants them their reference: the process of "reproduction".

The component of "reproduction" finds its basis in biology. It does not allude to processes of reproduction in the social, economic, cultural or symbolic dimensions but to one that occurs in the sphere of the biological, even when this process might be provoked by forces, movements, and events from other spheres of life. In addition, the qualification of "rights" points to the fact that elements of this process are recognized by the legal or political word. Indeed, from the great process of biological reproduction certain aspects and dimensions are identified and given life within the sphere of the legal discourse, and others are deemed as worthy political projects of civil mobilization and social movements.

On this last point it is worthwhile to insist that what creates the qualification of "rights" does not have an engulfing effect over the entire process. That is, the qualification of "rights" does not transform the whole process of reproduction into legal or political discourse. Only some parts and some particular instances are targeted by legal thought and chosen by civil organizations and social movements. In addition to being a qualification that sets boundaries, "rights" is for "reproduction" a mechanism that filters and modifies certain elements of the process from the domain of biology to the domain of law, and to the domain of social and political struggles.

From this first look we can already derive at least two distinct alternatives for the development of research:

- a) What dimensions, elements, or aspects of the process of reproduction have been legally recognized and transformed into rights? What are the reasons behind the selection of these dimensions, elements, or aspects of reproduction? What were the social, political, and cultural conditions that allowed and explain the legal recognition of selected dimensions, elements, or aspects, and their transformation into rights?
- b) What dimensions, elements, or aspects of the process of reproduction become part of political agendas and struggles? Who are the social agents, groups, and organizations that acknowledge the need to include and expand or to restrict and eliminate reproductive rights? What kind of tactics and strategies are used to promote and push for specific agendas? How do rights become institutionalized (and de-institutionalized)?

In addition to delimiting and qualifying the concept of "reproduction", the component of "rights" implies itself a relationship, a relationship that actually defines it. The concept of "rights" represents the crystallization of a historically grounded process of continuous or discontinuous interactions, exchanges, and clashes between state and civil society. That is, "rights" are the juridical product of social processes that attempt to negotiate the tension between the needs and perspectives of national states and their civil societies.

The implied relationship in the component of "rights" directly introduces the notion of tension. It is a notion that is permanent, because as a source it never disappears. Yet, at the same time it is transitive, to the extent that an agreement is always possible. It is a social tension with history and a result of different needs that, at certain points in time, may or may not be recognized, may or may not be open to negotiation.

In that sense, the qualification that "rights" grants to reproduction should be understood, also, as the conceptual inclusion of the two fundamental social actors, state and civil society, and the complex social relations that they hold in the generation of laws and regulations within a national society, and at a given historical period. What the inclusion of state and civil society does, in effect, is to raise and acknowledge the social (and if I may, sociological) nature of "rights".

From this second look, it is possible to propose two additional routes of research, that seem to be intimately related to the previous ones:

c) A first one that has to do with the historical and social reconstruction of the formation, formulation, and recognition of reproductive rights within the

boundaries of national societies. What were the specific conditions that gave birth to them? What were the specific processes that generated the possibilities of their recognition and formulation? What were the social needs and political forces behind their recognition and formulation?

- d) A second that is driven by the study of the social agents that participated in their formation, formulation, and the possibilities of their social and legal recognition. What were the social forces, groups of power, groups of representation, and the particular actors that were instrumental to the process? What explicit and implicit agendas were put in motion? Which were the open and hidden needs that were argued and negotiated? What relationship did the particular actors and social groups establish and maintain throughout the process?

### **2.2.2 The "Reproduction" Component**

As a process, human reproduction is a multidimensional and multifaceted phenomenon where vital forces of different orders intervene and whose complex dynamics is constituted by the interweaving of multiple domains: biological, social, cultural, psychological, linguistic, symbolic, and mythical.

From a formal point of view, in the process of human reproduction we can distinguish three large realms: sexuality, procreation, and rearing (see Chart 1). While the realm of procreation is constituted by three events that happen in a sequential way and with a successive order (conception, pregnancy, and childbirth), in the initial realm (sexuality), and in the terminal one (rearing) the constituent events do not present occurrences in a certain order. This is such, that

the realm of sexuality like that of rearing can be described, formally speaking, as a sequential mesh of simultaneous events, and that of procreation as a trajectory of sequential and successive events.

The first realm, that of sexuality, can be understood as an universe of libidinal impulses, symbolic structures, and signifying processes where masses of energy, forces, and movement permanently interact to produce the internal logic of its dynamics. In this universe we would find an incredibly diverse collection of attributes from symbolic and sociolinguistic images like sexual fantasies and libidinal repressions; the development of ideas, judgments, and individual forms of introjecting and interacting with norms and social controls; ways to symbolize, to separate, to administer, and to regulate bodies, activities, and expressions according to socially significant differentiation (gender, age, class, and race); behavioral expressions like sexual practices and their particular forms of corporal manifestation (skin, oral, anal, genital, etc.); elusive terrains like eroticism, courtship, and seduction, and even socio-corporal notions like carnal love along with its social forms of permissiveness, toleration, and subjection.

If we turn our attention to the last realm, that of rearing, I would also propose to describe it in the same sense: as an universe of emotional bonds, also with their symbolic dimensions and signifying processes, where (as is the case with sexuality) masses of energy, forces, and movements permanently interact to produce the internal logic of its dynamics. In this universe we would also find a tremendously diverse group of qualities from the very basic and emotionally significant dyadic relationship between children and their parents, and that carry

such a heavy representational weight through images, for example, like maternal love and paternal responsibility; spaces of communicative and affective interactions, of tensions and emotional conflicts, of negotiation of space and presence, of identity construction, and of consolidation of self and ego; ongoing processes that assure the transmission of perceptual, value, and behavioral frameworks like socialization, education, and communicative competence; even activities that are both practical and emotional linked to physical care (feeding, cleaning, body and health protection, organizing the immediate environment, etc.), and also linked to emotional care (affective protection, sentimental stimulation, loving, respecting, comforting, etc.).

An interesting similarity between the realm of sexuality and that of rearing (both of which I have assigned a spiral image in Chart 1) has to do with their internal dynamics and their processes of development. They both appear as vital spaces where a finite series of activities are organized, executed and repeated; they are exposed to permanent and changing signifying processes; are constantly affected by the historical moments of society, and by the life course events of individuals.

As vital spaces of finite activities, both sexuality and rearing have the possibility of being experienced as renovated life processes, and at the same time as learning processes. On the one hand, while the activities are well known and are experienced repeatedly, either in specific series or articulated in groups, they can be experienced as renovated life processes if they are left open or exposed to new symbols and new ways of attributing meaning. The activities themselves

might not change, but new sets of symbols and forms of interpretation transform the ways in which they are lived. On the other, the execution and repetition of activities, adjusted to the demands and needs of the life of individuals, and developed under certain contextual conditions, can benefit from past experiences and, in this sense, can produce the basic conditions to generate a continuous learning process. Thus, both the symbolic renovation and the possibility of learning from the past are presented to individuals as options in their everyday life experiences, and as ways to guide and interpret those experiences in their lives.

While sexuality and rearing can be relatively self-contained realms with relations, events, forces, and dynamics that maintain certain level of autonomy from each other, procreation substantially depends on the existence of each one of these realms. Sexuality generates the possibilities of its beginning, through conception, and rearing can only be a reality when the experience of procreation is complete through a successful birth. From this vantage point, procreation lacks relative autonomy, but instead becomes an experiential bridge that connects the realms of sexuality and rearing.

Procreation is constituted by a chain of events with a predetermined sequence and within specific ranges of time: childbirth does not happen before conception, and pregnancy, that it is taken to term, only happens after conception, and it drives to the childbirth. In contrast with sexuality and rearing, procreation is a relatively simple process of understanding and of predicting, because it is constituted by less variables, its elements have well-known forms of appearing,

and because in the constitution of its dynamics there are also less forces that intervene.

The temporal classification of its events and the linearity of their trajectory become a natural foundation for the possibility of programming and intervening in the process of procreation by different instances of society: family, community, and institutions. It is in this sense that procreation can be thought of as a territory, within the process of human reproduction, that is open and susceptible to the efficiency of normalization and to the diverse systems of social control. To be clear, I am not suggesting that sexuality and rearing are realms that escape the forces of social normalization - in one way or another, the patterns of behavior, the prevalence of traditions, and the existence of legal codes are signs contrary to this. Rather, what I am arguing and advancing as a hypothesis, is that from a theoretical and formal point of view procreation is, because of the linearity and orderly nature of its events, a territory more prone to intervention and normalization than the realms of sexuality and rearing.

Another characteristic that sets procreation apart from the other two realms has to do with the cultural signs and social markers of this process. In a complete sequence the events of conception, pregnancy, and childbirth produce cultural signs that tie the personal experience with social forms of interpretation, classifying, and labeling. At the same time, these events produce social markers that are visually confirmed by the extended social environment, and that are shared by more immediate groups of social membership. These vital experiences that have privileged record in the biographies of individuals, become social spaces



of public opinion, of moral judgment, of recognition, and of condemnation; their visibility transforms the sequence of events into social spaces of intervention. In this route of reflection, I do not find fortuitous that, in comparison with the realms of sexuality and rearing, it is in the realm of procreation where we find a more constant and diverse presence of social rituals, and their associated traditions and histories. That is to say, the social visibility of the events in the process of procreation has made them good cultural material for the establishment of "rites of passage".

The description and formal analysis of the characteristics of the three realms of reproduction and their differences has allowed us to understand their qualities and specificities, dynamics and movements, relationships and dimensions, and to identify their specific contributions to the process of human reproduction.

To engage and develop this theoretical exercise it has been necessary to make abstraction of the social conditions and determinants that affect reproduction, in general, and of each one of its realms, in particular. However it should be stated with all clarity that the abstraction of this sociological dimension has only been a methodological recourse, and in no way is meant as an analytic argument.

To be clear, the process of human reproduction is embedded and deeply marked by the systems of social differentiation and inequality of a society (age/generation, sex/gender, race/ethnicity, and class). These systems do not only work as mechanisms of inclusion and exclusion, as forms of prestige and

disadvantage, or as ways of assigning activities and distributing responsibilities, but in addition as the fundamental conditions that structure the experience itself. In this way, the systems of social differentiation and inequality of a society serve as normative criteria for the construction of moral judgments about, for example, who can "rightfully" exercise their sexuality and when, who can decide to get pregnant and under what circumstances, or who should be in charge of rearing children. But it also means that belonging to certain social groups (by a combination of age, sex, ethnicity/race, and class), at different stages of the life course, will generate specific forms of perceiving and of interpreting the events of reproduction, and will define the social spaces from where individuals are to live (in an advantageous or disadvantageous way) their reproductive experiences. The systems of social differentiation and inequality will also define the social territory where individuals establish their meaningful relationships, and are able to negotiate the circumstances and certain conditions under which they make their reproductive decisions. Thus, power relations not only submit, exclude, and dominate but also structure social experience.

### **2.2.3 The "Rights" Component**

It was in 1968 when reproductive decisions were, for the first time, declared as human rights. Article 16 of the Proclamation of Teheran established that all decisions concerning the number of children and their spacing should occur under conditions of freedom, and be taken responsibly. Subsequently it was ratified in 1969 by the Declaration of Social Progress and Development (articles 4 and 22), as well as by other decrees thereafter. It became part of the Convention

on the Elimination of All Forms of Discrimination Against Women (article 16, section 1e), that was passed in 1979 by the United Nations General Assembly, and forced as a convention in 1981 (United Nations Secretariat, 1990).

The core elements of the international definition of reproductive rights were established during that eleven year period and were materialized in the Convention's document. Article 16(1e) resolves that "State Parties ... shall ensure, on a basis of equality of men and women ... the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights" (Boland, R., 1997; CRLP, 2000).

From its emergence in the late sixties the formulation has undergone four types of changes that are worth noting. The first was in regard to the category of persons possessing the rights. It was transformed multiple times from the decade of the sixties to that of the eighties. The figure of entitlement shifted from "family" and "parents" at the beginning of the period, and settled on "couples and individuals" in 1984 (International Conference on Population, in Mexico City). The second change occurs during the eighties and throughout the nineties, when the concept of "responsibility" is qualified to mean "consideration of the needs of living and future children as well as a recognition of community responsibilities." The third and fourth change take place in the nineties and through various international conferences. On the one hand, while being ratified in its core elements, the definition is largely enhanced to include the "right to attain the highest standard of sexual and reproductive health." On the other, a

human rights maxim is asserted as the right “to make decisions concerning reproduction free of discrimination, coercion and violence” (Boland, R., 1997; CRLP, 2000; Dixon-Mueller, 1993; Petchesky, 1998).

I will analyze the meaning and the effects of those changes over the international discourse and the interpretation of reproductive rights in the next section. For the time being, however, I would like to turn to the analysis of the central definition (and its core elements) that was established in 1979 and has been ratified since then numerous times through international conferences and forums.

Reproductive rights are by nature multidimensional because they involve more than one moment and more than one decision. They are defined centrally by three dimensions: the decision to have a child, the decision of when to have a child, and the decision of regulating ones fertility. That is, they are rights that enable decisions about the possibility of progeny, and decisions in regard to ones own body.

Furthermore, reproductive rights are social rights (as we will see later on) because they imply and require the presence of a national state. The full and free exercise of the reproductive rights of individual citizens imply and require the presence of their national state in functions of supervision, protection, regulation, administration, service, and provision.

If we subject the fundamental postulates that define reproductive rights to the analysis of reproduction thus far advanced, it is possible to reveal some interesting characteristics. First, what has been enacted as reproductive rights in

the world of international declarations is circumscribed to the realm of procreation. Second, it is the possibility to decide about procreation, that is, to decide about conception, pregnancy, and childbirth what is essentially enabled and protected by these rights. Third, being that the decisions on the events of procreation are the moral and legal center of reproductive rights, what ultimately matters is the enabling and protection of the capacity to make those decisions. Finally, it is not enough to enable and protect the capacity to make the decisions. The decisions made need to be enacted in an environment of material quality, required services, and under an absolute respect of the social diversity and identity of the individuals involved.

To the extent that "reproductive rights" are concentrated in the events of conception, pregnancy, and childbirth to that extent is that there is a legal exclusion of the realms of sexuality and rearing. Both in the international norms and in their national translations, reproduction is not only defined as the conceptual equivalent of procreation, but it consequently implies the absence of sexuality and rearing in the legal discourse of "reproductive rights".

Indeed, the possible links that we can trace between "reproductive rights" and the realms of sexuality and rearing are, in any event, secondary. With the realm of sexuality the link is established through the institutional functions of formal instruction such as: a) access to information about sexual and reproductive physiology; b) the right to receive relevant information from qualified personnel and institutional services, when required and needed; c) access to medical information and services in sexual health, and d) access to preventive and curative

technologies. In the case of rearing, the possible links are even scarcer and weaker, whereas they depend on the existence of other rights, such as labor rights. The access to childcare services and maternity leaves, for example, are granted only to women that work in those sectors protected by specific legislation.

From this analysis I would like to make a twofold argument. On the one hand, it is important to acknowledge the discursive disparity between "reproductive rights" and their current effect of enabling only rights connected to the events of procreation. Not because I am suggesting we should reduce the legal terrain of their influence or confine them to be only procreative rights. But, to point out their current limitations and the need to expand their protection beyond the limits of procreation, to areas and elements in the realms of sexuality and rearing. On the other hand, however, I believe it would be a mistake to subsume the entire realms of sexuality and rearing to the legal protection of "reproductive rights". The fact that "reproductive rights" have international recognition and protection does not mean that they are capable of responding to the needs of rights connected with sexuality and rearing or that they should be a protective legal umbrella of these two realms. Reproduction while obviously linked with sexuality and rearing should continue to be kept separate from these two realms. Sexual rights and the rights involved in the rearing of children require their own analyses and deserve separate processes of recognition and entitlement.

### **2.3 ENTITLEMENT, RESPONSIBILITY, AND INEQUALITY**

Entitlement is a crucial aspect of the discursive and legal constitution of a right. The determination and assignment of entitlements for human rights has

normally been a straightforward and relatively uncomplicated process. This, however, has not been the case for reproductive rights. In this section I will explore the reasons of this unique discursive and legal history. Additionally, I will explore the "social character" of reproductive rights, the concept of responsibility in their definition, and the meaning that social inequality has for the possibilities of their exercise.

### **2.3.1 Entitlement and Its Transformations**

From their inception the transformations that reproductive rights have undergone have been fundamentally tied to the definition of their entitlement. Who is the subject of these rights? Do reproductive rights protect and entitle individuals, couples, parents or families? Who should be the beneficiary of these rights, women, men, couples, parents, or families? These were the kind of questions that lead the discussions and the efforts to define the persons that possessed these rights.

While in the mid 60s the family was perceived to be the social unit who should be the the recipient of these rights, by 1968 this figure had been replaced by parents, however. During the 70s the entitlement was changed to that of the couple, and remained this way until the mid-80s. Currently, however, entitlement has moved away from the idea of the family or parents as the central recipient, has established the couple as a basic unit, and has fundamentally enhanced the definition to include, protect, and empower individuals as well (Boland, R., 1997; CRLP, 2000; Dixon-Mueller, 1993; Fincancioglu, 1990).

The need for the first mayor transformation in the entitlement can be readily understood because the family was a very imprecise and diffuse legal reference, and because it allowed the inclusion of people not directly involved in the process of reproduction. The imprecision had to do with the own definition of family and its variations across societies and cultures. But the central concern was that entitling the family jeopardized the autonomy and self-determination of those individuals directly involved in the decisions regarding reproduction. These problems made the abandonment of the figure of the family a logical move, but replacing it with parents opened up another series of problems.

The choice of entitling parents over families was by comparison a better choice, to the extent that it granted rights to persons directly involved in the process of reproduction, but it was an ambiguous alternative because it introduced a troubling exclusion. This form of entitlement made parenthood a prerequisite to these rights, disabling their enjoyment and exercise as a way to delay or avoid parenthood all together. While formally this change moved away from the intervention of a diffuse yet powerful set of kin related people in the decisions about reproduction, it still made basic assumptions about the constitution of families through reproduction. In this way, parenthood was not presented as a choice but as a normative assumption.

The multiple steps from entitling the family, and then parents, to entitling couples represented an evolution toward a more precise reference. People not directly involved in the process of reproduction were left outside the domain of decisions, and parenthood was no longer assumed as a condition for granting



these rights. However, the entitlement of couples was still problematic to the extent that the autonomy of individuals, in particular of women, was relativized and not protected. Granting the entitlement to couples assumed equal standing, participation, and responsibility in reproduction. This assumption is highly problematic given the social dynamics of gender power relations. The changes in entitlement and the demands for further specification required a much more complex discussion, however.

The fundamental concern can be summarized in the following way. Under patriarchal structures of social organization gender relations disable women in the exercise of their rights. Gender relations create a constant and systematic disadvantage for women that prevent them from making decisions about reproduction, and from exercising their rights in an autonomous way across different social spheres and throughout their life courses.

In light of this problem of a sociological order, the response, however, was not sociological but from the domain of legal discourse. Since gender relations put women at a disadvantage, the solution rested -it was thought- in originating rights and entitlements capable of counteracting or reversing that situation. The question was how best to design rights and curtail their entitlements so as to grant women differential legal power, as a way of equalizing with men their capacity to make decisions and of protecting them from male domination. Women required legal protection and a discourse capable of empowering them during the decision making process, and in the exercise of their reproductive rights.

A route chosen proposed modifications in the definition of entitlement. Rights should be granted first and foremost to individual women, and only then should they be extended to their couple or significant other. The intention was to privilege women over men, to create the legal structures to empower them as decision-makers and to fortify the possibility for them to exercise their rights. The problem was how to justify this unequal entitlement of two individuals participating in the same process. The argument found suggested that this was justifiable to the extent that the participation of women and men in the process of reproduction was not at all equal. While genetically men participate as much as women during conception, from a biological point of view women have the central role and carry a larger responsibility during pregnancy and birth. Thus women are fundamental for the most part of the process of reproduction; an experience that has no parallel in the life of men. Because of this fact and the right to self-determination over one's own body, women -it was argued- should have a primordial place in the definition of reproductive rights and their entitlements (Azzolini, A., 1993; De Barbieri, T., 1994 Fincancioglu, N., 1990; Macklin, R., 1990).

This type of argumentation has the grave problem of supporting, unintentionally all be it, social practices and reinforcing reasoning of a patriarchal character. On the one hand, by centering the decision only on one person (childbearing women) it minimizes the participation, responsibility, and accountability of the other member of the reproductive couple, and all potential contributions to the decision-making process and the enrichment of the

experience. This exclusion is also unfortunate because it diminishes the importance that decisions can (and should) be a product of communicative processes between both members of the reproductive couple, where individual rights are exercised freely and responsibilities are shared equally. Communicative processes, that are intersubjective, not only allow for mutual understanding of desires and needs, but in addition they are a very effective tool for solving conflicting ideas, positions, plans, and needs. On the other, the attribution of rights represents, at the same time, attribution of obligations. In this sense, to privilege childbearing women in the entitlement has, also, the subtext of making procreation, from beginning to end, their exclusive responsibility. A normative route that was conceived as a counterbalance to gender inequality and as a way to empower women in the decision-making process turned out to work against women. By excluding men (or the other member of the reproductive couple), it impoverishes our conceptions of reproductive decision-making processes. And while the design of the entitlement might grant women a certain "legal edge", the overall consequence is, in effect, disempowering because it places the whole burden of procreation (yet again) solely on women, pretty much in the fashion that patriarchal reasoning has done for such a long time.

The fact that men and women have a biologically different participation in reproduction, and that there are social practices that systematically discriminate against women does not mean that the remedy, from a normative point of view, is to construct discriminatory rights or exclusionary entitlements. If the objective is to create social conditions of gender equality and to grant equal rights within

couples and for individuals, this does not seem to be the route. I believe that the problem stems from confusing the normative dimension with the sociological. It is problematic, at best, to give a normative solution to a sociological problem without recognizing the complex relationship these dimensions hold, and the limits that each one has to produce changes in the other.

The international definition of reproductive rights mitigated the problem and deferred the debate by extending the entitlement to include both the couple and individuals involved in the process of reproduction. The more substantive debate, however, about how to face and deal with the issue of gender inequality, when defining entitlements and rights, remained open until the mid 1990s.

Three consecutive international conferences (1993: World Conference on Human Rights in Vienna, 1994: International Conference on Population and Development in Cairo, and 1995: Fourth World Conference on Women in Beijing) had a definitive effect over the orientation and content of the debate by moving it away from the domain of entitlement. The problem of gender inequality for the exercise of reproductive rights was no longer seen as resolvable through a normative transformation of entitlement. It was no longer a battle about formally empowering women in an effort to equalize the conditions under which reproductive decisions were made. Now the goal was about embedding the notion of gender equality as a necessary condition for reproductive decisions and the exercise of reproductive rights. This resulted in a substantive and profound change that, in my estimation, transformed the entire landscape of the debate by

shifting the framework of reference and interpretation, and positively responding to the need of facing the problem of gender inequality.

Paragraph 96 of the Beijing Declaration and Platform for Action, can be read as a crystallization of that process: “The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behavior and its consequences” (United Nations, 1995).

I agree with Rosalind Petchesky when she refers to this as an historic international recognition (1998). It represents a conceptual and political landmark because it established the social need for gender equality beyond the previously recognized public realms. Equal relations between men and women need to be assured, protected, and fostered in the private sphere, and in the specific realms of family, reproduction, and intimacy for women’s human rights to self-determination and equality to excel and flourish. This international recognition makes gender equality a social issue that cuts across all spheres of life.

### **2.3.2 Social Character of Entitlement and the Concept of Responsibility**

From a historical and formal point of view, reproductive rights should be included simultaneously under two different categories of human rights: as individual rights and social rights. On the one hand, the right to decide how many, when, or whether to have children is the expression of an individual right to

reproductive freedom. It is predicated on the notion of individual liberty, and it implies the right to control one's own body. On the other, the right to have the information and means to regulate (or not) one's own fertility is the expression of a right to social goods. Regardless of the choices people make in regard to their fertility, all individuals have the right to the most current and accurate information, and to the most effective and safe means for the regulation of their fertility.

This connection to both the domains of individual and social rights creates an interesting duality. It introduces a tension between the individual freedom to choose and the conditions that need to be met for that choice to be significant and meaningful. In other words, it establishes the need to assure access to certain social goods as a condition for reproductive freedom.

Ruth Dixon-Mueller describes that dual characteristic in the following way:

The individual liberty elements consist of the freedom to choose among alternative sexual and reproductive behaviors without coercion from governments or from individuals or social institutions ... The social entitlement elements consist of the obligation of the state, or of "society," to ensure that everyone can exercise the full range of economic, social, political, and civil rights that infuse reproductive choice with real meaning (1993:14-15).

The inclusion of reproductive decisions as rights of citizens in the World Plan of Action in Population of 1974 established two types of obligations for national governments. First, governments cannot interfere nor inhibit the decision-making processes of their citizens with regard to reproduction, either through mechanisms of coercion or the concealment of the necessary information

for making reproductive decisions. Reproductive decisions are the exclusive and sovereign domain of citizens, and it is the obligation of the state, or the governments in turn, to assure that they are protected and kept this way. Second, governments have the obligation to provide the necessary information so citizens can make knowledgeable decisions, as well as to provide the means for those decisions to materialize in the best way possible (Fincancioglu, N., 1990; Hartmann, B., 1987; Warwick, D., 1982).

As Dixon Mueller points out,

the role of governments, ideally, is to balance in practice the sometimes contradictory demands of individual freedom and social entitlement as abstractly defined ... Too little state intervention can make it impossible for people to decide freely on the number and spacing of their children, for example, because they lack the economic resources, information, and services to do so or because their rights are violated by other individuals or groups. Too much intervention can infringe on individual choice in the name of collective security or the common good (1993:15).

All rights require a social environment of freedom and respect, or to put it in a negative sense, require the absence of all forms of coercion. However and unlike individual rights, social rights are by definition rights that are also dependent on specific conditions for their exercise to be possible. The lack of these conditions constitutes direct impediments to their expression and exercise: without hospitals, schools, and a productive plant it renders impossible to exercise the right to health, to education, and to work. Social rights establish a binding contract of the state towards civil society. They imply duties and responsibilities for governments of providing the means and conditions so their populations can fully exercise their rights as citizens of their societies. In this sense, the social

rights of a population are dependent on their state's provision and enabling intervention.

What is unique about reproductive rights, is that without being exclusively social rights their individual dimension require access to social goods (information and means), and a social agreement to protect their autonomy from individuals, groups, social institutions, and particularly from government itself.

Why would an internationally supported plan of action (like the one elaborated in 1974) obligate national governments not to interfere in the reproductive decisions of their citizens, by way of coercive measures? Why would governments feel the need to intervene in the reproductive decisions of their citizens? The normative effort could have been a response to governments that were violating the reproductive freedom of their citizens or an anticipation of that possibility. Whether the intention was corrective or preventive, the most interesting issue, it seems to me, is that it was perceived to be a problem that required addressing.

While a liberal framework for international law would require that all governments respect the reproductive freedom of their citizens, the World Plan of 1974 set out to obligate national governments not to be coercive, even if they felt it was justifiable in the name of the common good. In the 1970s population growth had already been articulated as a major obstacle, if not the central reason, for the lack of social and economic development in the so-called "Third World" countries. Governments that were concerned about their population growth could only see certain type of reproductive decisions as good for the nation.



Reproductive decisions could not be made disregarding the "needs of the nation"; otherwise citizenship freedom would be used irresponsibly. In this sense, reproductive freedom was at odds with national development projects, and ultimately with the common good. Reproductive decisions needed to be not only free --it was thought-- but also responsible.

Since their inception, reproductive rights have been accompanied by the idea of responsibility. But the concept was not fully defined until 1974 through the World Plan of Action in Population. According to that formulation, and in the absence of later modifications to this date, responsibility is introduced as a qualifier to the exercise of reproductive freedom. Couples and individuals need to take into consideration their situation, as well as the implications of their decisions for the development of their children, their community, and their society. A revision of the concept in 1984 added that a responsible decision would also require taking into account the well-being of future children (United Nations, 1990; Boland, R., 1997).

Defined in that way, the inclusion of the concept of responsibility within reproductive rights seems to create an intrinsic contradiction. "Does the recognition of the needs of the community, and of society justify the intervention of the state where fertility decision-making processes take place? If the answer is affirmative, to what degree and in what way? This fundamental topic continues being debated in the different instances of the United Nations" (United Nations Secretariat, 1990:59).

While the Cairo Conference in 1994 resulted in important modifications to the interpretation of reproductive rights and meaningful enhancements of its domain, it is somewhat noteworthy that in its core elements the international definition has remained (the entitlement figure being the exception) as it was formulated in 1968 and reformulated in 1979. This includes the concept of responsibility, and its subsequent qualifiers. In effect, the Cairo Program of Action “moved reproductive rights away from only family planning and access to these services towards a broader focus on sexual and reproductive health ... It also emphasized the principle that the right to reproductive self-determination is a right that is to be exercised freely, without discrimination, violence, or coercion” (Boland, R., 1997: 16). Both of these modifications were not only ratified but further developed and specified in 1995 at the Beijing Conference and in its Program of Action.

In light of all these modifications that have enhanced reproductive rights, it is quite remarkable and somewhat unsettling that the concept of responsibility has not been challenge or changed in any way.

The inclusion and permanence of the idea of responsibility in the definition of reproductive rights can be interpreted-- I am suggesting --as a product of a political compromise between state interventionists and reproductive rights defenders. From the state's perspective it can work as a corrective to “deviant behavior” and as an avenue to protect the discretionary power to intervene when the project of the nation is threatened. From the rights' perspective it situates the whole decision-making process in the sphere of individual freedom,

and therefore under the control of individuals and couples, including the interpretation of what is best for their communities and societies. But neither the tension nor the contradictions disappear.

The rights' perspective has always manifested a concern with state intervention in the decision-making processes of individuals and couples. And while there has been a certain level of consensus around the idea of restricting this type of state intervention, the concept of responsibility has produced debate and divisions. The discussion has been divided in two fronts: those that support an initiative where the boundaries of freedom and responsibility are clearly delineated and, those that believe in the omission of the concept of responsibility from the international definition. The first position understands the problem as transitory: the source of conflict is a direct result of the lack of conceptual clarity. All that is required is a clear definition of where freedom ends and responsibility begins. A clearly established definition of responsibility-- they would argue-- not only would restrict state intervention, but would obligate individuals to think in terms of the common good. In contrast, the second position defends the idea that individuals having the means and the necessary knowledge will achieve reproductive decisions in accordance not only to their needs, but to their social reality as well. Thus, there is no need to establish responsibility beforehand because the decisions would be contextually situated responding differentially to different sectors of the population. Of course, this assumes that the project of the nation would be receptive and inclusive of a wide array of reproductive decisions, and would respect the content of those decisions.

To what extent, then, is it a wise idea that an international definition of reproductive rights include the concept of responsibility? Is it possible to reconcile the freedom of individuals and couples with the needs of their communities, their societies, and their nation states? Should there even be an effort to reconcile differences between these spheres? And if so, is the concept of responsibility capable of achieving this?

The debates surrounding the concept of responsibility have suggested that there are different plausible interpretations of the concept, and that these can lead to dramatically different expressions of reproductive rights. Furthermore, I believe that the opposing interpretations of the concept of responsibility are symptoms of conceptual contradictions that are not only worth exploring but that need to be faced and solved.

The fact that the concept of responsibility is still part of the international definition of reproductive rights, and that it still remains without clarification has, in my opinion, serious implications. In its current form, the concept of responsibility allows states to intervene "legitimately" in the reproductive decisions of their citizens, on the grounds that their decisions or actions are irresponsible. The scenario is not a difficult one to imagine. A governmental plan evaluates the possible implications of a certain rate of population growth as negative for the economic development and future viability of the nation. Fertility is identified as the variable that has the most weight in producing that population growth, and contraception as the most effective tool to bring down the fertility rate. Caring about the future of the nation the government would organize efforts

and structure plans with the objective of reversing the trend and avoiding its negative consequences. In this way fertility is linked to economic development and high fertility is perceived to be an obstacle to a better future. Contraception and reproductive choices become the social space where government meets citizens, the administrative and political "battle ground" where decisions will be sanctioned as responsible or not. How much a government is willing to push for what they have determined to be a "responsible" decision, and to encroach on the autonomy of individuals and couples will ultimately depend on how authoritarian or democratic a country is. But an active government that "cares" about the future of the nation will aggressively pursue administrative goals, becoming a permanent threat to free and autonomous reproductive decisions.

Without a clear international definition, the interpretation that governments make of the concept of responsibility will be dependent on the prevailing political culture and the political relations of that society. At the center of this question we have the problem of the potential or real contradiction between state needs and the needs of social groups and individuals; of how tolerant of difference and even of dissent governments are; of how important the autonomy and freedom of citizens is to governments, and how representative the administration of state is of the will of the people (see Chart 2). Also at the center is the crucial problem of how and who defines, at certain historical junctions, what is a national need, what is in the best interest of a nation, and what constitutes a social and political priority. Ultimately, it is about how democratic a society is, and how participatory and representative the political system really is.

Population policies are specific and historical expressions of how states and governments interpret the relation between development and demographic phenomena. In turn, the establishment of demographic goals are quantitative ways in which the interpretation of that relation is translated into plans and programs. It is the state and its concrete governments who determines what is the best population scenario for the development of the nation, and who designs it into programmatic practice. It is within this interpretative frame that reproductive responsibility is contextually defined.

Given the centrality of fertility for population growth, demographic goals find their translations into fertility level goals, regardless if the intention is to reduce or increase growth. The national goal for population growth becomes a national goal for fertility, and from there an ideal number of children to have. The establishment of demographic goals and their translation into number of children sets the normative boundaries for reproduction, and determines in a numerical form the criteria for responsible reproductive behavior.

The free exercise of reproductive rights is defined and determined within these programmatically fixed limits. Anything outside these limits might be considered from an individual or couple's perspective a free decision, an unconstrained reproductive act, but from the perspective of the state it is deemed as irresponsible, or at best as a reproductive freedom used irresponsibly. In this way, responsibility appears as the process by which individuals and couples incorporate in their reproductive decisions the historical "needs of the nation". It is not enough, for individuals and couples, to take into consideration their

situation, as well as the implications of their decisions for the development and well-being of their (current and future) children, a responsible decision will require considering and incorporating the “demographic demands” and the “developmental needs” of their community and their society, such that the decision itself reflects the “needs of the nation”. Because no other sphere provides such a precise measure to judge a reproductive decision as do population policies and their demographic goals, ultimately it is the "needs of the nation", expressed in a programmatic ideal number of children to have, that provides the criteria for responsibility. The concept of responsibility becomes the metamorphosis of the will of the state into individual will; it creates the precise limits within which women and men, couples can be sanctioned as "free and responsible" when exercising their rights and making their reproductive decisions.

Whether or not the inclusion of the concept of responsibility was a product of a political compromise, its presence results in a lopsided definition that favors state intervention and disempowers citizens in the exercise of their reproductive rights. The lack of a definitive and forceful challenge to rid the definition of the concept of responsibility may suggest a tacit agreement with the need for state intervention and a patronizing politics: "People can't be trusted to do the right thing, to make adequate reproductive decisions; that is why we have to appeal to their sense of obligation and force them to be responsible for their own reproductive actions. And if people can't be trusted, who is going to assure the nation's future?"

Even in the absence of this last perverse political possibility, I believe there are enough reasons to completely eliminate the concept of responsibility from the international definition of reproductive rights. The concept of responsibility allows, invites, and justifies state intervention; it reflects a politics of disdain and not of trust, and it advocates normalization and intolerance rather than respect and acceptance of reproductive diversity.

### **2.3.3 Entitlement, Inequality, and the Exercise of Rights**

Due to the universal criteria that defines the concept of justice in a society, all individuals are equal. They are equal because the only condition that an individual requires to be entitled to laws and regulations, and to the protection of a system of justice is to be a member of that society (Lummis, 1992).

From a strictly formal perspective, "if the same norms and rules are applied to each and every one of the members of a society (independently of the social group to which they belong), these norms and rules make all equal from the point of view of the norms and rules in question" (Heller, 1987:16). It is the social existence of a system of laws and their pervasive application what allows all citizens in a formal democracy to be members of that society. A system of laws provides equal rights and equality of all citizens under them. In turn, citizenship appears as the legal form of social membership (Lummis, 1992).

In the particular case of reproductive rights, all individuals are entitled to the inalienable rights over their own bodies, and to be able to decide freely about their fertility and when or whether to have children. The only condition that they require is having been born in this world, for they are international rights granted



to all human beings. Furthermore, if individuals were born in a country where these rights are protected legally, that is to say, where the condition of being a citizen allows for the translation of a human right into a constitutional right, then their national state will have the obligation of assuring that the circumstances are suitable for the free and full exercise of reproductive decisions. From this vantage point, the citizens of the world that are also citizens of these nations turn out to hold a rights' privilege because they have a double legal and moral protection, one from an international legal frame and from a national one as well. These citizens would have "doubly" insured the entitlement to rights that seek to safeguard their reproductive life.

However, the fact that belonging to a society will grant individuals with a series of rights and obligations, and that these will work as equalizers between all individuals of that society, does not mean that all will have the same possibilities or be in equality of circumstances to exercise those rights that (formally) define them all as equal. Having rights does not mean that one can exercise them. Between the entitlement to a formal right that all individuals have due to their membership to a society and the possibility of their exercise stand social constraints specific to that society (structural, systemic, ideological, symbolic).

In contemporary societies, social inequality is foundational to social relations and central to the organization of social life and opportunities. The system of inequality in a given society changes from one historical period to another, and is a product of a complex articulation of different (sub)systems of social inequality based on class, gender, race and ethnicity, and age. The weight

that each one of these (sub)systems has on the profile of the overall stratification and inequality depends on the specific history and internal dynamics of a society. These complex articulations are unique to the social formation of each society, yet they are permanently undergoing transformations and re-articulations (Andersen and Collins, 1992; Marger, 1999; Ore, 2000; Rosenblum and Travis, 1996.)

Social inequality, as a result of these complex articulations, determines the manner in which individuals participate in the production and benefit from the distribution of social wealth, as well as the structure of options within which individuals construct their lives and exercise their personal will. And, conversely, in the exercise of their personal will and the construction of their lives individuals create and re-create the structure of options and the related social determinations, as well as their own insertion into the production and distribution of social wealth (Bourdieu, 1977 & 1990; Giddens, 1984; Habermas, 1984 & 1987; Luhmann and De Georgi, 1993).

Trying to explain the relationship of multiple determinations between agency and structure, Giddens uses the concept of duality to assess that unique characteristic and quality of all social structures: "Structure (is) the medium and outcome of the conduct it recursively organises; the structural properties of social systems do not exist outside of action but are chronically implicated in its production and reproduction" (1984, p.374).

It is not only that people's actions are constantly confronted by social structures or that social structures permanently impose constraints over people's actions, but also that the different (sub)systems of inequality (class, gender, race

and ethnicity, and age) have a foundational effect over the relationship that people and social groups establish with each other. The action of individuals and groups, as well as the multiple constraints of social structure operate through the mesh of social inequality and its different (sub)systems.

Consequently, the exercise of rights happens in accordance with the options and conditions arranged by the relative position that individuals and groups occupy within the mesh of (sub)systems of social inequality. The specificity of the exercise of those rights, then, is generated by the exercise of personal will within the context of the options that social inequality offers to individuals and groups.

All individuals are equal under the law because as citizens of a nation they are entitled to the same rights. This equality is only but formal; as members of a society their equal entitlement does not assure equal enjoyment. The formal equality is completely shattered when equal rights are realized as unequal exercise, and equal entitlement becomes unequal enjoyment. For some individuals the exercise of rights will happen in a social environment full of possibilities, and saturated with diverse alternatives. For others, the choices will be given in a context of restricted possibilities, and a small array of alternatives. For yet others, the choice might not even be a possibility.

Although formally all citizens of a nation, that recognizes reproductive rights, are entitled to the same set of rights not all will be able to exercise them in a context of multiple options and diverse alternatives; some will not even have a chance to exercise them at all. For example, if we take the issue of access to

medical services, we find that some citizens will be able to choose a specialized, highly qualified, and private medical practice according to their resources, and the amount of money they are willing to pay for them. Others will be immediately precluded from these options because resources cannot be made readily available for these purposes; they will be obligated to make use of services partial or totally subsidized and provided by state institutions. Yet others, in stark contrast, will be excluded from access to reproductive medical services all together.

In the previous example, the effect of social inequality over access to medical services is presented as a problem linked to economic resources. But the issue is larger than economic resources and has crucial effects over other important dimensions of the possibility of exercising reproductive rights and the social experience involved in that exercise. Taking into account variations across social contexts, having access to a private medical service or only to a public one is gaining access to two very different medical environments. Aside from the issues of quality and specialization that are affected by economic resources, each one of the environments will produce very distinct experiences due to differences in the type of physician-patient relationship, normative practices, institutional orientations, social expectations, sense of entitlement, and capacity for negotiation.

Also the dynamics of the interaction might be altered in ways that affect the quality of the experience, and the decision making process. Allowing for social and cultural variations, physicians in a private practice, for example, will tend to view their patients as clients that need to be catered to, and perhaps make

efforts to preserve the clientilistic relationship to the extent that they are personally profiting from it. This might translate into a more receptive physician to the specific needs and demands of the patient. In turn, a patient that has purchased a service might feel more empowered to expect and demand a certain level of quality, that would range anywhere from the amount and type of information demanded to feeling comfortable when accepting or declining a medical suggestion or procedure. This sense of empowerment could work as a potentiating force of the level and quality of the information the person brings into the medical service, and would allow for arriving at a reproductive decision more suited to the life and the needs of the patient.

Access to medical services is only but one area of the whole set of reproductive rights. Although in different ways, all areas are affected by social inequality once we place entitlement within a specific social context and we explore the differential possibilities that citizens would have of actualizing these rights.

The vital social experience of individuals permanently questions the level of feasibility of formal equality granted by the law, and it challenges the notion that formal equality translates in anyway into the social conditions of their every day life existence. Legal discourse defends not only that all citizens are equal under the law, but even that all citizens have equal possibilities of enjoying and exercising all rights, as well as being equally protected by the law. Formal equality encounters stark forms of inequality; the all inclusive promise of rights clashes with the pervasive forms of exclusion and marginalization creating a

schizophrenic split between the discursive promises of the law and the social experiences of individuals.

## **2.4 REPRODUCTIVE DECISIONS: A NORMATIVE AND SOCIOLOGICAL INTERPRETATION**

Using a Habermasian methodology, this section explores the concept of reproductive rights in two analytical dimensions: as a normative phenomenon and as a sociological reality. The analysis is developed from the perspective of the decision-making process involved. The international definition of reproductive rights is based on a series of complex assumptions about decisions pertaining to reproduction. I start by briefly presenting the basic assumptions of this definition, and reconstruct the meaning these assumptions have for decisions. Then, I propose an ideal process of reproductive decision-making as a normative frame for reproductive rights. Once I have established the ideal normative process, in the final part of this section I turn my attention to the identification and analysis of possible disturbances. By disturbances I mean the social, political, and economic conditions that interfere with the development of an ideal process of decision-making. Two main sources of disturbances are assessed for both the private and the public realms: power relations and systems of social inequality.

### **2.4.1 On the Assumptions**

According to the components that define the legal parameters of reproductive rights in a national context or a specific country, certain conditions are required so that these rights can be fully exercised by their citizens. On the one hand, the state is under the obligation of providing to its population of

current, truthful, general and specific information, as well as the appropriate means for the regulation of fertility. On the other, in order for citizens to carry out their reproductive decisions freely, the state should not only abstain from intervening in the process of decision-making but in addition make sure that the social conditions that surround this process allows for the generation of autonomous decisions (Boland, R., 1997; CRLP, 2000; Dixon-Mueller, 1993; Petchesky, 1998; United Nations, 1990 & 1995) .

In that sense, the state plays the double role of general supplier and of guardian of the freedom and autonomy of its citizens. That is why the full exercise of reproductive rights, in particular, but of all the social rights, in general, depends on concrete provisions and actions from the state to assure autonomy and freedom. While the role of supplier is directly tied to the availability and distribution of resources, the role of guardian is more closely linked to political will and the relationship it has with civil society. For the provision of information and means the state requires material and human resources, but their availability does not assure that the state has the political will of distributing them or that society has access to them; resources are a necessary condition but they are not enough to satisfy the obligation of providing or the need for the provision. In contrast, for the protection of autonomy and freedom in the exercise of citizens' rights, the state is required to have an unrestricted respect for their private processes and to trust that their decisions will ultimately be good for the nation, regardless if they approve or not of them. In anyone of the two cases, the key resides in that the state is able to recognize the political virtue of one of the

maxims of democracy: ultimately, the power of the state is located in civil society, and in the decisions that citizens make. These, of course, can be expressed as preferences while voting, while determining what is the common good or through intersubjective public deliberations.

The full exercise of the reproductive rights of the citizens of a nation can only be developed in relation with the state: on the basis of its provisions and under the help of its guardianship.

The legal definition of reproductive rights and their explanatory (international) discourse has been constructed on the basis of a series of normative assumptions that are not, necessarily, made explicit or submitted to analytical and public scrutiny. Nevertheless, these assumptions have greatly informed and guided their interpretation. In this way, for example, the right to make free and informed decisions about when or whether to have children presupposes two simultaneous conditions. On the one hand, the process of making decisions needs to develop in the absence of all forms of coercion. In other words, the decisions made by citizens should be carried out in a fully autonomous way and in correspondence to the reasons and needs determined by them. On the other, the state is responsible for assuring that all citizens have access to accurate and relevant information on reproduction, such that their decisions are made with full knowledge of the current alternatives to regulate fertility and to protect pregnancies. Reproductive rights are envisioned on the basis of a network of assumptions that precede them, and at the same time explain their legal discourse.



In an effort to clarify the assumptions that exist behind the international definition of reproductive rights, and to advance in their discussion I would like to propose a reading from a normative perspective. The objective is twofold. First, it allows to open the discussion about the content of reproductive rights by making their justification and explanation explicit, and enables an evaluation of their discursive legitimacy. That is to say, it allows for an analytical scrutiny of some of their underpinnings, the uncovering of veiled elements, and an opportunity to thematize the taken-for-granted reasoning behind them. Second, once we have defined the normative parameters it is not only possible to establish goals to pursue, but in addition to use normative agreements as an organized way to evaluate current practices, and to discover the impediments for the realization of the desired norm.

#### **2.4.2 Ideal Process for Making Reproductive Decisions**

Following a Habermasian approach, I propose the reconstruction of a normative framework for reproductive rights as an ideal decision-making process, where the end product is a decision about reproduction able to fulfill all the conceptual and procedural requirements that would be demanded by the current international definition of reproductive rights.

The ideal decision-making process takes place in the private dimension of the social life as much as it does in the public dimension (see Chart 3). In each one of these dimensions differentiated dynamics are generated that contribute in different moments of the process to produce general, as well as particular resolutions. The process begins in the private sphere, it moves toward the public

domain and returns back to the private where resolutions are taken (although always transitory and potentially modifiable) in specific moments of the life course.

It is in the dimension of the private that couples face their need of regulating or not their fertility, of becoming or not pregnant, of interrupting or not a pregnancy, of having or not a child. Couples develop their decision-making processes in their private worlds, through communicative interactions between them and with other people that are significant for their social and affective life and that are able to become emotional, moral, and cultural interlocutors. Through these interactions, couples discover, develop, and make explicit their desires, expectations, interests, and plans. This group of representations will constitute a constant source of meaning and the symbolic material from which couples can elaborate their reproductive decisions, and compare them against other social representations and decisions made by others: family members, friends, acquaintances or other people with whom they interact.

The elements and criteria used for the elaboration of the decisions should be chosen and determined autonomously by each couple. If these elements and criteria come from history, tradition, science, or magic and if they are affective, moral, rational, religious, or economic depends ultimately on the needs and preferences of the couple.

To the extent that all decisions are potentially exposed to reconsideration and evaluations, these should always be appreciated as transitory and modifiable. For example, through communicative interactions the couple can discover new

elements, standards, or ideas that modify their position or perspective in relation to certain reproductive decisions. Likewise, the discovery of new information and alternatives can constitute important ground that can lead to evaluations of past positions and perhaps partial or total reconsideration.

In this dimension and in regard to the dynamics of the private, the freedom to make a reproductive decision is fundamentally determined by the exercise of individual and couple autonomy. Within the couple, free and equal individuals engage in explorations and conversations that are fair and respectful of each other's needs. These conditions are extended to other private contexts to sustain the autonomy of the couple so that we can assure that the communicative interactions, with other significant interlocutors, are developed in the absence of impositions or coercion.

Once a reproductive decision is elaborated in the private domain, the couple meets with the logic and nature of social relations, in the public sphere, when they require and look for the provision of professional and specialized services. The type of service that is required depends on the type of decision that the couple has taken.

Public institutions (governmental or not) should provide three different types of services: 1) information that is both general, and specific, as well as professional and specialized; 2) advice that is comprehensive and particular, and recommendations that are supported by professional and specialized knowledge, and 3) the most appropriate, current, and safe means that allow the couple to carry out their decisions. The provision of these services should not only be of the best

possible quality, but they should be offered with an unrestrained recognition and respect for the couple's autonomy and their decisions.

The participation of institutions in the process of reproductive decisions should be, fundamentally, to facilitate the realizations of the desires, needs, and determinations of the couple. It is neither the function nor the charge of institutions to intervene in the determination of the judgments, criteria or elements of a decision and, much less, to determine the type or content of the decision for the couple. Institutions should assure that the couple has elaborated their decision aware of all relevant information and in light of professional recommendations that are impartial, of quality, and current. Additionally, they should offer the necessary means so that, once the decision is taken, couples can carry it out under the best and most healthy conditions.

The meeting between couples with demands and providers of services take place within the realm of specific institutions that are regulated by national legislation, as well as by administrative norms and internal regulations. Even when institutions work according to the law and with arrangement to regulations, they hold a certain degree of autonomy that allows them to define the characteristics of the services they want to offer. Furthermore, this relative autonomy allows them to determine the basic profile of their internal organization, dynamics, and the structure within which social relations are established. It is in this sense that the freedom to make decisions requires not only of the protection from legal discourse, apparent in laws, but also from institutional

norms that guide the action of the providers of services, and that regulate the relationship with citizens that require of their services.

On the basis of the previous arguments we can conclude that the full exercise of reproductive rights is assured through two basic conditions: freedom and access.

Decisions can be elaborated freely if the process of decision-making is developed with absolute autonomy and in the absence of all forms of coercion. This has a different significance for the private dimension than for the public realm. In the private sphere freedom begins with self-determination and the control of one's own body. This principle is extended to the relationship of the couple (regardless of its daily, sexual, affective, legal or social arrangement), but it requires to be paired with the equality of rights and responsibilities in the decision-making process, in its realization, and in its consequences. Also, the presence of significant others in making decisions need to be carried out through free and respectful exchanges, and never as the imposition of approaches, perspectives, and interpretations that disregard the needs and desires of the couple. In the public realm, freedom is carried out from the private when the couple obtains an institutional service that is complete, of quality, and respectful of the autonomy of their decision.

The condition of access also has different meanings depending on the dimension in which the decision-making process is occurring. In the private, it begins with a positive perception of the right to have access to the provision of services, and it extends to the possibility of obtaining relevant and necessary

information throughout the process, and in the different moments of the life course of individuals and couples. In the public, access also refers to information, that is professional and specialized, and that can aid the couple in the evaluation of alternatives and in the elaboration of their decisions. Additionally, institutions represent the access to the most appropriate, current, and safe means for the realization of the decisions made with regard to fertility and reproduction. Both in the private as in the public sphere it is crucial that access be universal, unrestricted, and equal for all citizens.

#### **2.4.3 Disturbances in the Ideal Process for Making Reproductive Decisions**

Once we have established the general structure of the normative ideal of the process of making reproductive decisions, now we can identify and analyze, in a very general way, the type of disturbances that the process suffers or to which it can be exposed or subjected (see Chart 4).

By disturbances I am referring to all those social, political, and economic conditions that interfere or can potentially interfere in the development of an ideal process of decision-making. Therefore, these disturbances represent serious obstacles for the full exercise of the reproductive rights of citizens in specific national contexts.

The sources of these interferences are basically two: power relations and systems of social differentiation that produce social inequality. The concept of power is understood here in its negative sense, that is to say, as domination. That is, power relations are conceptualized as relations of domination, where the will of some is imposed on others. In turn, I use systems of social differentiation when

referring to a network of perceptions and interpretations that make differences significant, and that generate and legitimate multiple social actions based on those forms of explaining and interpreting differences. These are forms that are prevalent and pervasive in societies, and that have a certain historical stability. However, not all forms of social differentiation become forms of social inequality. Together social inequality and relations of domination, produce the fundamental disturbances in the ideal process of making decisions, and constitute the central obstacles for the full exercise of reproductive rights.

These disturbances occur both in the private and public sphere, although the specific ways in which they interfere and affect decisions will vary according to the dimension and to the social interactions through which they manifest their destructive force.

For the part of the process that occurs in the private sphere, the interferences have two origins. One can be located in the logic and the dynamics of personal relationships, and the other linked to the class position and the place occupied within the structure of opportunities.

For personal and intimate relationships, gender and generational domination (and perhaps other forms as well) are constant threats for developing decisions based on communicative interactions between equals. The imposition of perspectives, needs, and desires of one individual over the other transform decisions into unilateral outcomes that fracture the right to decide about one's own body, and relativize the free determination about one's own fertility and reproduction. In the world of intimacy, the self-determination over one's own

body and the freedom to decide over one's own reproduction can only be fully exercised when there is absolute respect for the other, intersubjective understanding, and communicative interactions that are free and equal.

We have basically the same problem when the couple or their individuals share their desires, needs, and plans with friends and members of their nuclear and extensive families. If the communicative exchanges become instruments of domination and vehicles for the imposition of other's will by means of gender, generation, or kinship relationships the self-determination over the body and the freedom to make reproductive decisions disappears in a complex net of manipulation and subjection. In this way communities ratify and reproduce their membership through bonds of domination and subordination, instead of becoming enriching resources for the affective and symbolic world, and for the construction of individual identity, at the time that they consolidate a sense of belonging.

Class position and the structure of opportunities have a disturbance effect in the private sphere because it interferes with access to information and the capacity to manage it. The most obvious and direct relationship is linked to schooling and formal education: the higher the education, the more exposure the individual will have to complete, truthful, current, and relevant information. But other associations might be underlying, perhaps connected with the formation of analytic and critical judgment, with the capacity to discern and discriminate, as well as with the possibilities of constructing autonomous and independent positions.



As for the part of the process that is developed in the public realm, the interference's have two origins. One can be found in the logic and dynamics of medical and bureaucratic relations and, the other in the system of classes and structure of opportunities. To the extent that the provision of services happens, generally, in medical institutions, the relations that are established between citizens and providers are constantly exposed to different kinds of systems of power. The doctor-patient relation transforms reproductive knowledge into a specialized and professional knowledge that is concentrated in the social figure of physicians and medical personnel. It also transforms individuals that require a service into ignorant patients that depend on medical knowledge and their will to provide. This distribution of knowledge structures the relation in a hierarchical and vertical fashion, granting physicians and medical personnel a great deal of discretionary power and influence over the reproductive decisions of individuals and couples.

In turn, the structure and organization of institutions, the internal logic of their administrative systems and their specific forms of exercising power, the vertical flow of information and control, as well as their authoritarian practices and forms of distributing privileges are all brought to the forefront when citizens are forced to deal with the bureaucrats that represent those institutions. The content of the relation that the institutional employee offers to the citizen depends on how the institution defines its functions of service provision, perceive their responsibility towards citizens, and interpret their obligations in the provision of that service. To the extent that bureaucratic and medical institutions are

intertwined in an administrative complex the supply of services, the doctor-patient and bureaucrat-citizen relation appear linked and interwoven in their practices.

The disturbances produced by the exercise of medical and bureaucratic power take place in combination and through other forms of social domination. In this way, systems of inequality and of social discrimination based on social class, race/ethnicity, sex, and age become vehicles of the exercise of medical and bureaucratic power or additional systemic forms to distribute attention, respect, services, and resources in a systematic, differential, and unequal way.

The social class system and the structure of opportunities of a given society, in a specific period of its history, has profound effects over access to services. It not only determines the chances of having access, but also the characteristics and the quality of the services offered by the non-governmental (private sector), of course, but also over those offered by governmental institutions.

The patterns of concentration and distribution of material and social wealth generate favorable conditions of access for certain sectors of the population, while restricting or precluding access for others. It is in this sense that the amount and quality of alternatives, on the basis of which reproductive decisions are made, depend on the amount of social and material resources that individuals and couples are capable of mobilizing during decision-making processes throughout their life course.

This complex of power relations and systems of social inequality constantly threat the two central conditions for the exercise of reproductive rights

in the public domain: freedom and access. On the one hand, the universal entitlement of obtaining services is seriously disabled. Nation states fall short from their obligation to provide basic services to its entire population, and not all citizens have the possibility of obtaining them or of benefiting from the same service quality. On the other, the singular characteristic of the right to self-determination and freedom is deeply questioned. Institutions abandon their charge to protect and encourage individuals and couples to develop free and autonomous reproductive decisions, and instead allow for the imposition of criteria that is guided by the logic of the exercise of specific powers and the intrusion of institutional programs and policies, that may or not coincide with the needs and desires of citizens.

## **Chapter 3: Population Policies, Fertility Control, and Reproductive Rights in Mexico**

### **3.1 INTRODUCTION: A LOOK FROM THE BOTTOM UP**

Since the late sixties and early seventies, two events have had a particularly solid impact on the population dynamics of Mexico. First, a radical shift in the state's perception of the role of population growth in national development resulted in a policy aimed at controlling growth rather than encouraging it. Second, a steep decline in the general fertility rates, along with a significant increase in the prevalence of contraception, have reduced the overall levels of population growth.

Regarding the association between fertility and contraception, various studies have been able to describe their evolution, levels, and tendencies, but have advanced very little in the realm of their sociological and cultural explanation. In turn, the majority of the literature on population policy has consisted of historiographic accounts that focus on the evaluation of the effectiveness of certain programs, neglecting the social and political consequences that these programs have had in Mexico. In contrast, other research has attempted the study of population policy through the analysis of power relations, of the medicalization and institutionalization of reproduction, and from a rights of citizens perspective.

The analysis presented in this chapter is informed by the following analytical ideas. The study of population policy (from design to enforcement) can take a top-down or a bottom-up viewpoint. These are analytically and politically

contrasting positions that have radically different consequences over the entire research process, the formulation of questions, and the processes of interpretation.

Furthermore, this analysis calls for a perspective that is centered on the critique of power relations (Honneth, 1991; Kelly, 1994; Lukes, 1986; Wartenberg, 1992), that looks at political decision-making processes from the view, needs, and demands of civil society and citizens' rights, rather than from the instrumental and administrative needs of the state and governments. This implies a transformation of the reading of demographic phenomena and its interpretation in crucial ways, as well as a change in the processes of cognitive justification for sociological inquiry.

In effect, the justification for the study of population policies stops being the evaluation of programmatic achievements or the degree to which population growth targets have been reached. It stops being the comparison between population projections, institutional goals, and demographic rates. It stops being the search for problems in the design and execution of governmental programs, as well as the reasons why certain population groups appear to be "unresponsive" to institutional incentives and governmental campaigns to initiate contraception or further control their fertility. The analytical entrance can no longer be justified exclusively by a particular reading of the relation between population growth and development or the political needs of the state. In contrast, the approach I support in this chapter inquires about the needs of citizens, and the possibilities they have of exercising their reproductive rights, as well as the examination of the social conditions under which this takes place.

As an application of the framework developed in chapter two, this chapter carries out a reading of the connection between population policies, fertility regulation, and the constitutional endowment of reproductive rights in Mexico as a complex and conflicting social and political relationship that confronts state rationality with the rights of citizens over reproduction and its fundamental decisions.

The chapter is divided in two major sections. In the first section, I present a general review of population policies and their relation to the contemporary dynamics of fertility and contraception in Mexico, as well as the research and explanations developed in this regard. In the second section, I describe the process by which controlling fertility became the center of population policy efforts. I propose interpreting the institutionalization and medicalization of reproduction as a social process that explains how reproductive decisions were moved from the private to the public domain. Finally, an analysis of family planning services and contraception, will allow for an evaluation of the exercise of reproductive rights within the context of governmental medical institutions in contemporary Mexico.

### **3.2 POPULATION POLICIES: FROM STIMULATION TO CONTROL**

#### **3.2.1 Policies, Fertility, and Contraception**

On the basis of the paradigm that claims that the strength of a government and a nation rests on its population, in 1936 the first national population policy was approved and its central conception can be understood as clearly pronatalistic (México, 1938; Cabrera, 1989). Following the substantial drop in the general and

specific mortality rates between the third and fourth decade of this century, fertility became the variable that in great measure explains the rapid population growth experienced by Mexico (Alba, 1982; Mier y Terán, 1991; Sandoval, 1988). Since that time, the evolution of fertility was characterized by high and increasing levels that were sustained throughout a 30 year period. In fact, around the years of 1966 and 1967 the country had the highest levels of fertility in its history (Juárez, et al., 1989; Juárez, and Quilodrán, 1990; Welti, 1997).

At the beginning of the seventies the pronatalistic conception was abandoned. A major political and legislative change moved population policy from a stimulating to a controlling position. In correspondence, the primary objective of the 1974 General Law of Population (still in effect today) is to "regulate all phenomena that affect population in regard to its volume, structure, dynamics and distribution in the national territory, with the purpose of achieving a just and equitable participation of the benefits of social and economic development" (Mexico, 1974, Article 1).

With the approval of the General Law, the state embraced a neo-Malthusian stance that now perceived population growth as a major obstacle for economic and social development. Being the reduction of population growth the central change that is pursued, the regulation of fertility is conceived and constructed as the fundamental tool for reaching this purpose. This is why, in 1976 and at a national level, the promotion of contraception became one of the most important policy goals and family planning programs the center of

population policy-making and enforcement (Aparicio, 1988; Cervantes, 1989 and 1990; De Barbieri, 1985; Llera, 1991; Warwick, 1982).

With the full support of the Legislative branch of government, then President Luis Echeverría put forward initiatives for changing articles of the constitution and introduced the General Law of Population. The new law not only explained the state's change in conception, but in addition it created the institutional mechanisms for specific policies to be designed and executed following the spirit of the legal changes.

Although it is true that these paradigmatic changes in population policies were not forced by the cumulative influence and pressure of organized social movements and of political interest groups (like it happened in other countries in Latin America and around the globe, Dixon-Mueller and Germain, 1994), the legal initiatives, the creation of family planning public services, and the widespread availability of contraception was met with the endorsement of numerous social groups and the approval of large sectors of Mexico's population.

Indeed, there were only a few socially organized groups that openly questioned these policy changes and confronted them in public. Claiming a betrayal of catholic moral principles the top hierarchy of the Mexican church and its non-ordained "civil" organization, the Opus Dei, confronted the legal changes publicly, and were particularly troubled by family planning services and the access to contraception. Despite their relative cultural power and their political influence, these retrograde forces, however, were unable to reverse the course of the governmental initiatives or to interfere with the establishment of family



planning as a public service (Warwick, 1982). However, this confrontational position did not last long, giving way to a silent tolerance towards the contraceptive practices of its followers (Cabrera, 1994; Márquez, 1984).

By contrast, a very broad spectrum of organized social and political groups, manifested their unfettered support for the legal changes and the institutional initiatives. Women's and feminist organizations, demographers and social scientists, primary health physicians and health providers, as well as academic institutions, private non-profit organizations and professional associations evaluated the changes as an undeniable progressive move. But the interpretations and reasons for backing the presidential initiatives were far from homogenous and reflected a very diverse political landscape (Cabrera, 1994; Tuirán, 1988). While some groups interpreted the changes in policy as a sign of the modernization of Mexico, others saw them with sympathy but were doubtful of the possibilities of their realization given the political tradition of big promises and ineffectual bureaucratic follow up. Nevertheless, one way or the other the positions were very diverse, but the support was pervasive (Márquez, 1984; Warwick, 1982).

Additionally, the steep increase and the extensive use of contraception, particularly among urban, middle class women with above average education, during the first years of birth-control legality point out the level of receptivity that the policy changes had in specific sectors of the population (Table 1 & 2). The initiation of governmental family planning programs matched up with many sectors that were already contracepting (in some cases covertly), and with others

that were ready but were unable to find the institutional or medical support to do so (Juárez, and Quilodrán, 1990). Whether one interprets this as "unmet need" for contraception (Bongaarts, 1991) or not, the importance for the political process is that it represented an additional source (albeit non-organized) of extensive support to the policy changes that were being enacted.

In 1973, the year the General Law of Population was approved and selling contraceptives was no longer illegal, slightly less than 12% of married women of childbearing ages (15 to 45 years) used modern contraceptive methods. By 1976 and 1982 the percentage of use of any method (traditional and modern) rose to 30.2 and 47.7%, respectively. In 1987 the observed figure was 52.7% (Table 1, Graph 1). Towards the end of the eighties, and after the first decade of the National Family Planning Program more than half of all married women of childbearing ages were using contraception to regulate their fertility and avoid pregnancies (Aparicio, 1988a; CONAPO, 1995; Figueroa, et al. 1988; Palma, et al., 1990).

In the next decade, from 1987 to 1997, contraceptive prevalence continued to experience an important increase. By 1992 it had expanded to 63.1%, and from there to 66.5% in 1995, and to 68.5% in 1997 (Table 1, Graph 1). That is, by the end of the nineties seven out of every ten married women were contraceptors in Mexico. In a period of twenty five years contraception went from being a rare event practiced by the few to being pervasively and extensively used by the majority (CONAPO, 1995 and 1999; Palma, et al., 1990).

The increasing trend of contraceptive prevalence in Mexico was, however, not homogeneously experienced. While the differences by age and number of children (parity) are significant and point to patterns that concentrate the increase in some groups more than in others, place of residence (rural/urban) and formal education are the indicators that more sharply differentiate the contraceptive experience of women in the last quarter of the 20th century.

The highest levels of contraceptive prevalence, throughout the period, have been concentrated in the central groups of childbearing ages (25 to 39 years), and towards the latter years it has also included the 40 to 44 years of age group. While the prevalence of the two youngest (15-19 and 20-24) and the oldest age groups (45-49) have been comparatively low, it is clear that all groups have experience a steady and rapid increase (Table 1, Graph 2).

The age pattern has its correlative in the prevalence by parity, to the extent that the lowest contraceptive use is located in the groups of women with the lowest parity (one or no children), and in the group with the highest (four or more children) (Table 1, Graph 3).

While the contraceptive prevalence by age and parity are reflecting a certain fertility schedule and certain patterns of reproductive decisions, for example to decide in favor of contraception only after having 1 or 2 children, the differentials by place of residence and formal education are indicators of processes linked to social inequality and the unequal distribution of wealth in Mexico.

A rural place of residence is defined as a locality with a population of less than 2,500. Overwhelmingly, these are relatively isolated from basic services, have a low integration to labor and commodity markets, and concentrate the largest amount of the population in Mexico living in poverty. From 1976 to 1997, the differences between the prevalence in rural and urban Mexico have remained very high. Although the gap has been closing (from 28 to 20 percentage points), the use of contraception in rural sites has a lag of 10 years, relatively constant throughout the period, when compared to urban sites (Table 1, Graph 4). Lack of access to family planning services certainly plays an important part in this, but other direct and secondary effects of social inequality are also responsible, such as the level of formal education.

The strong relation between formal education and contraceptive prevalence is present from 1976 to 1997, and maintains the same pattern of differences. Every level of schooling makes an important difference, but the great divide is the completion of elementary school. Women with elementary school or more have significantly higher levels of contraceptive use than those with less or no schooling at all (Table 1, Graph 5).

Given the changes that took place in the dynamics of contraception, one would expect as well important changes to follow in the levels and patterns of fertility, during the same time period. In effect, from the peak years of the sixties the total fertility rates<sup>6</sup> have continuously decreased. In a first phase, the rates decreased very sharply from the levels reached in the mid-sixties were the average

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<sup>6</sup> Indicates the average number of children that women of childbearing age (from 15 to 49 years) would have at the end of their reproductive life, with the observed levels of procreation by age.

number of children was as high as 7.1 per women of childbearing age to 4.3 for the year of 1980 (Table 3, Graph 6). This decline is quite remarkable if one considers that it happened only in the span of a decade and a half. At the beginning of the eighties women in Mexico were having on average three children less than what their counterparts were having fifteen years earlier (Juárez, et al., 1989; Juárez, and Quilodrán, 1990; Welte, 1997; Zavala, 1989).

The total fertility rates reached in the sixties were in fact the highest fertility experienced in Mexico's contemporary history and indicate the state of reproduction prior to the changes in population policy. In turn, the decline that was experienced in the years to follow the national family planning programs are an indication, as well, of the state of reproductive decisions during this period. The new access and public availability to contraception was well received by large sectors of the population, and contraceptive practices became widespread in a very short period of time. A considerable number of women and their partners were not only ready to regulate their reproduction, but seemed to be also ready to stop their reproduction at levels that were considered a decade earlier to be only at half way through a "reproductive career" (so to speak). In other words, the legal changes that allowed the approval of the General Law of Population and the charge given to medical institutions to carry out a comprehensive and national family planning program all happened within a social context that was in tuned or perhaps even requiring of these policy changes and the supply of those contraceptive services.

A second and quite different phase, however, was experienced throughout the eighties and on into the nineties. While the total fertility rate continued with a declining dynamics, this occurred at a much slower pace than the one observed for the seventies and early eighties. In effect, for roughly the same number of years the fertility levels decreased in less than half of what was observed for the previous phase of decline. In 1980, women of childbearing ages were having on average 4.3 children. This level of fertility went down to 3.9, five years later (1985), to a 3.2 level for 1990, and an estimation of 2.9 for the mid-nineties (1995) (Table 3, Graph 6) (CONAPO, 1995 and 1999; Figueroa, 1992; Paz, 1995; Welti, 1997). There is no doubt that the decline in the fertility levels was still very important for this period, but it is also notable the considerable slowing of the pace. In the mid-nineties women of childbearing ages were having 1.4 less children than their correlatives at the beginning of the eighties.

The high levels of fertility throughout the decades of the sixties and seventies meant that women were within the cycle of procreation for very long periods of their reproductive life. In terms of the patterns of fertility by age what can be observed since 1974 is an early schedule with the majority of births occurring between the ages of 20 and 34, and a very high concentration between 20 and 29 years (Table 3, Graph 7). And while the general shape of the fertility by age has remained throughout the 30 year period, all age groups have experienced very important reductions in their levels, and childbirth has become an experience of younger women (average fertility age fell from 29.0 to 27.2, 1974-1996) (Table 3, Graph 8). The most outstanding changes, however, are that there has been a

significant delay of the first birth (19.8 to 23.6 years, 1974-1999), and that the spacing between births has increased by as much as 1.5 years (4.1 to 5.7 years, 1974-1999. Estimations from CONAPO, 1999).

Fertility differentials follow a similar pattern of effects than the ones we observed for contraceptive prevalence. Both place of residence and formal education are also significant dividers of the experience of fertility in Mexico.

Rural fertility has been consistently higher than urban fertility, yet the gap between them has narrowed from 2.8 in 1974 to 1.2 children in 1996. Still, rural fertility has recorded levels at different points throughout the period that are similar than those observed for urban fertility ten years before (Table 4, Graph 9).

Similarly, the fertility differences produced by formal education are profound. The fertility levels of women with no formal education or incomplete elementary school have been consistently higher than the levels of women that completed elementary school or had achieved higher schooling. These differences are maintained throughout the period, despite the reduction that all of them experienced, for every year under observation. In fact, some of the differences are astounding. From 1974 to 1985, the fertility of women with no instruction or some elementary school was twice as high as that of women with junior high school or more. When comparing women with the highest instruction to those with no instruction, this huge gap actually remains for 1990 and 1996 (Table 5, Graph 10).

In addition to those differentials, whether a woman participates or not in an economic activity creates two very contrasting reproductive experiences.

Women that actively participate in an economic activity have lower fertility rates than those that do not, and the differences range from 3 children in 1974 to 1.4 in 1996 (Table 6, Graph 11). The pattern of these differences are maintained when introducing place of residence, but they are more pronounced for urban women than for rural (Table 7).

Taken together and within a time frame of 25 to 30 years, the demographic transformations in Mexico have been quite notable: the level of fertility has been dramatically cut in more than half and the prevalence of general contraceptive use has more than doubled. All of these changes, of course, have occurred within the framework of an important legal change, an active population policy, that has been enacted through an aggressive family planning program, and whose implementation was normatively charged to governmental medical institutions (De Barbieri, 1982; Figueroa, 1991; Llera, 1991; Warwick, 1982).

The dramatic increase in the use of birth-control methods and the associated reduction in the fertility rates observed in the first phase of these changes, was followed by a second phase in which the general and long term trends while sustained their pace was reduced considerably.

In 1997 contraceptive prevalence reached the historic high of 68.5% among all married women in childbearing ages in Mexico. While this represents more than a doubling of the prevalence since the mid-seventies, from the estimated level for the sixties (in the area of 15 to 17%)<sup>7</sup> it would actually constitute a five-fold gain. Most of the increase, however, happened before the

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<sup>7</sup> Welte estimated a Mexico City prevalence of 25% for 1964 (1980), and García estimated a rural prevalence of 10.3% for 1969 (1976).



mid-eighties. In fact, 59% of the increase occurred between 1976 and 1987, and perhaps up to 69% between the mid-sixties and 1987 (if one considers the estimation for the sixties to be at a level of 17%)

Likewise the total fertility rate experienced a similar behavior. In 1995, Mexico recorded the historic low total fertility rate of 2.9 children among all childbearing women. However, sixty seven percent of the total decline took place in the first fifteen years of the thirty year period between 1965 and 1995. (CONAPO, 1995; Palma, et al., 1990; Paz, 1995; Welte, 1997; Zavala, 1989).

The behavior of these indicators in the second phase of this dynamics (from the eighties to the nineties) generated, not only different interpretations but a debate with opposing routes of explanation.

From the governmental institutions these trends were interpreted as programmatic signs of the need to redouble efforts. Fertility control programs should be extended, coverage should be increased and inaccessible or marginal areas should be provided with the basic services of the national family planning program. States, regions, and groups of population were classified according to their levels of fertility and birth-control use, and those that fell under the classification of "traditional" (high fertility and low contraception) were defined as programmatic priorities (CONAPO, 1990 and 1991; López, 1989).

From the non-governmental and academic side, the latest dynamics of fertility and contraceptive prevalence called for careful examinations and complex diagnoses, rather than a programmatic response. And although the questions that were raised could not be answered in the short term, they were suggested should

become routes of analysis, critical perspectives, and research projects. To what extent can we interpret these data as symptoms of a process of "disengagement" between the state and civil society? Could this be indicating a process of an "uncoupling" of the rationality of the Mexican state in regard to population policy, from the needs of citizens in general, and of women in particular with regard to their reproductive decisions? (Cervantes, 1990 and 1993). What type of social and cultural processes generated the changes? Are these behaviors going to generate new trends, patterns, and levels, and establish a new relation between fertility and contraception? (Figueroa, 1990; Figueroa, et al. 1988) To what extent are these indicating a reaction and response to aggressive family planning programs and fertility control policies? (Camarena, 1991; Lerner and Quesnel, 1994). Over the past 30 years family planning programs have been enforced by medical bureaucracies and been guided by quantitative population growth goals. What kinds of effects have these quantitatively oriented programs had over the capacity to make decisions in regard to reproduction? (Cervantes, 1993; De Barbieri, 1990; Figueroa, 1992; Merrick, T., 1990; Tuirán, R., 1988).

### **3.2.2 Top-Down versus Bottom-Up Perspective**

The evolution of the levels of fertility and contraceptive use in Mexico has been strongly documented through six surveys at the national level (EMF 1976, ENPUA 1978 and 1979, END 1982, ENFES 1987, ENADID 1992, ENPF 1995, ENADID 1997)<sup>8</sup>. These surveys have been employed in research projects that

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<sup>8</sup> EMF 1976: Encuesta Mexicana de Fecundidad (Mexican Fertility Survey, part of the World Fertility Surveys). ENPUA 1978 and 1979: Encuesta Nacional de Prevalencia en el Uso de Métodos Anticonceptivos (National Survey on the Prevalence and Use of Contraceptive Methods). END 1982: Encuesta Nacional Demográfica (National Demographic Survey). ENFES 1987:

have explored changes in the magnitude of the rates of fertility and contraceptive use throughout different time periods, as well as in relation to certain socioeconomic and demographic characteristics of the population. Because the vast majority of these studies have concentrated on the description of those changes, the explanation of the causal factors of reproductive behavior have been seriously limited. In spite of the advances in the analysis of the socioeconomic and demographic variables that exercise considerable influence over contraceptive usage and fertility, comparatively less has been done regarding the sociocultural determinants of fertility and its regulation (Figueroa, J.G., 1988; Palma, Y. et al., 1990). However, in spite of their relative scarcity some studies have made interesting contributions to the area, by exploring the world of perceptions and cultural constructions, and their role within reproduction (Figueroa, 1990b; Shedlin and Hollerbach, 1981) or by examining the relationship between social institutions and reproduction (Camarena, 1991; Lerner and Quesnel 1992 and 1994).

The study of the design, implementation and decision-making processes of Mexico's population policies is clearly less advanced and has had an unequal development. Since the approval of the General Law of Population in 1974 until the mid-eighties, the field was basically developed, and largely controlled by governmental institutions such as National Population Council, the Ministry of Health and the Mexican Institute of Social Security. When looking at the past,

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Encuesta Nacional sobre Fecundidad y Salud (National Survey on Fertility and Health, part of the Demographic and Health Surveys). ENADID 1992: Encuesta Nacional de Indicadores Demográficos (National Survey on Demographic Indicators), ENPF 1995: Encuesta Nacional de Planificación Familiar (National Survey of Family Planning), ENADID 1997: Encuesta Nacional de Indicadores Demográficos (National Survey on Demographic Indicators).

they reconstruct the evolution of the state's population thought since the Mexican Revolution, as a coherent, logical, and undisturbed process. When focusing on the present, the descriptions of governmental programs, and actions are aimed at celebrating and applauding the institutional efforts of the state<sup>9</sup>, rather than striving to produce analytical and critical explanations of the social and political processes involved. In contrast, towards the mid-eighties a series of studies emerge suggesting and creating alternative perspectives to the one espoused by the official voice of governmental institutions. With a different approach and developing a critical analysis of the demographic rationality of the state and the processes of implementation of fertility control policies, these new studies develop a reading of the political dynamics involved in population policy-making from the perspective of the social conditions and rights of citizens, and the responsibilities of the state to protect these rights and allow for their unrestricted exercise (Bronfman, et al., 1986; Cervantes, 1990 and 1993; De Barbieri, 1982, 1985 and 1990; Figueroa, 1991b, 1992b, 1994a and 1995a; Figueroa, et al., 1994; Márquez, 1984; Merrick, 1990; Tuirán, 1988; Warwick, 1982).

Using the theories of modernization and of demographic transition as analytical frameworks, a group of studies have interpreted the process that Mexico experienced during the last three decades of the 20th century, as a transition from a traditional demographic regime of natural fertility to a modern regime of controlled fertility (Alba, and Potter, 1986; Juárez, et al., 1989; Juárez, and Quilodrán, 1990; Mier y Terán, and Rabell, 1990; Zavala, 1989). Others, have

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<sup>9</sup> Good examples of these are: Martínez, J., 1985; Sandoval, A., 1988. Of course, the historiographic documents produced by the National Population Council, are also good illustrations: Consejo Nacional de Población 1975, 1978, 1985, 1990, and 1991.

proposed conceptualizing the changes in reproductive behavior as a direct response and a result of a well designed and efficiently orchestrated population policy. They argue that the achievement of policy goals has occurred only because the state has met and fulfilled societal needs for regulating fertility, through the establishment of a national family planning program and the provision of contraceptive methods and services (CEDDU, 1970; Cabrera, 1989, 1990, and 1994; Martínez, 1985; Sandoval, 1988; Urbina, et al., 1984; Zavala, 1990). Yet others, argue that the data that is produced and available constitutes a major obstacle for the exploration and analysis of the social forces involved in the recent reproductive changes experienced by diverse sectors of Mexico's population. They called for the production of data that is sensitive to processes that lay behind demographic indicators in the realm of cultural, economic, and social relations (Bronfman, et al. 1986; Figueroa, et al., 1988; Palma, et al., 1990). Also, these and other authors have pointed out the need for in-depth studies that engage the social and cultural dimensions of reproductive decisions, and that explore the function and effects of social inequality, power relations, and the institutional mediation between population policies and reproductive behavior (Cervantes, 1993; De Barbieri, 1990; Figueroa, 1991b, 1992a, and 1992b; Merrick, 1990; Tuirán, 1988; Warwick, 1990).

Finally, throughout the nineties there has been a proliferation of works that have called for a systematic critique of population policies, through an analysis of social inequality, from a gender perspective, and using a reproductive rights approach. Worried about a long tradition of institutional authoritarianism, the

authors have argued for an assertion of citizenship rights and the opening of processes of democratization in diverse spheres of social life in contemporary Mexico (Aparicio, 1988b, 1993; Azzolini, 1993; Cervantes, 1993, 1995a, 1995b and 1996; De Barbieri, 1990, 1994, and 1999; Figueroa, 1992, 1995 and 1999; Figueroa, et al., 1994; Lamas, 1993, 1994, and 1995; Murieda, and Hernández, 1994; Ortiz, 1994, 1998, and 1999).

### **3.3 INSTITUTIONALIZATION AND MEDICALIZATION OF REPRODUCTIVE DECISIONS**

#### **3.3.1 Fertility Control as the Center of Population Policies**

When population growth was defined as a primary obstacle for social and economic development, and in this sense as an impediment for the fulfillment of the so-called "national project", the modern political paradigm defined, at the same time, the general orientation of population policy and the center around which the enforcement of governmental programs would revolve (Cervantes, 1990). In fact, in order to halt and reverse the population increase trend, and in light of the important decline of the overall mortality levels, the reduction of birth rates, through a modification of reproductive patterns, was seen as the most viable alternative.

Through a series of transformations, population policy in Mexico acquired its basic content, its programmatic profile, and its enforcement strategy. First, all fundamental concerns were reduced to only one component: fertility levels. Second, to the extent that modern contraception was conceived as the most efficient mechanism for the control of fertility, the programmatic axis was

transferred to the governmental sector in charge of administrating public health services. Third, when the promotion and diffusion of contraceptive methods was defined as the main policy action of family planning programs, medical bureaucracies were given a very active role in determining the success of national demographic plans. Thus, in one political process Mexico's population policy experienced a demographic reductionism, a medicalization of programs and actions, and consequently, reproductive decisions became institutionalized.

To the extent that decisions concerning procreation were converted in targets of institutional activities, and their outcome, in terms of children ever born, was used as a criterion to evaluate the impact of family planning programs, all decisions concerning reproduction and family size were no longer seen as private affairs, or decisions to be made in the realm of privacy (Tuirán, R., 1988).

The programmatic task of modifying reproductive cultural norms and practices that stimulated high fertility rates began by attracting women to medical institutions using a discourse that argued the existence of an inevitable relationship between reproductive behavior and medical knowledge, and that reduced women to users or potential users of contraception. Reproductive intentions of having two or seven children, the postponement of pregnancies or the definitive limitation of fertility, and all actions and decisions regarding reproduction could not continue taking place within the exclusive limits of the family, they had to be uprooted and transferred to those social spaces where medicine was the hegemonic reason and practice, in order to subject them to intervention, to reorientation, to redefinition. At the same time that reproductive

decisions were dislodged from the private terrain, familial and domestic knowledge were de-legitimized, subsumed by the domain of medical knowledge and its paradigms. Specific governmental institutions were made programmatic instruments of the nation's demographic will and the interpretation of the nation's demographic needs were conferred upon medical bureaucracies.

With the centralization of population policy around the control of fertility, the programmatic efforts for reaching population growth targets became the responsibility of governmental health institutions (Figueroa, 1991a). The tasks of translating the political paradigms of the state concerning population control, and of convincing the society that their reproductive needs had to be in full correspondence with the government's demographic goals, and with their policies and programs, were given to health professionals in general, but in particular these responsibilities were given to the physicians that worked for governmental institutions. This is how the reproductive decision making process was medicalized and the exercise of reproductive rights became institutionalized in Mexico (Tuirán, 1988).

### **3.3.2 Medical Institutions and Reproductive Rights**

In the 21 year period between 1976 and 1997, contraceptive prevalence among married women of childbearing ages had a spectacular increase. In effect, while the use of all methods more than doubled (from 30.2% to 68.5%), the exclusive use of modern methods almost tripled (from 23.1% to 59.2%) (Table 1).

The steep increase in contraceptive prevalence was certainly not homogeneous across type of method. In fact, the pattern of usage by method



presented important variations throughout the period. The year the National Family Planning Program was set in motion, the most popular method was clearly the pill, followed by traditional methods, IUD's, and female operation. Twenty years later this contraceptive mix had changed completely. In the late nineties, female operation had definitely become the most used method, followed by IUD's, traditional methods, and the pill (Table 8, Graph 12).

While in 1976 the pill attracted 36% of the total use, by the end of the period, in 1997, it had become one of the least favored methods dropping to only 10%. Conversely, while female operation was in 1976 prevalent only among 9% of contraceptors, in two decades it increased dramatically to being only five percentage points away from half of all contraceptive use in Mexico (Table 8, Graph 12).

A key provision of the General Law of Population was the establishment of the National Population Council (CONAPO), an interministerial coordinating body headed by the Secretary of Government (equivalent to a ministry of the interior), and directed by a General Secretary (Mexico, 1974).

As an institution of the executive branch of government, the formal function of the Council is to design, organize, and evaluate the implementation of population policies, plans, and programs in the country. Since 1974, at the beginning of every new governmental period (every six years) it has been customary for the Council to formulate the National Population Program. This document has to be first approved by an interministerial council presided by the Secretary of Government and later endorsed by the President of Mexico in a

national meeting with all state governors. Formally, it represents the coordinated efforts of all relevant governmental agencies that are seen as necessary participants in the implementation of such policies (Mexico, 1974).

In the specific case of fertility control policies and family planning programs, that have played such a central role for population policies at large, the main governmental agencies (aside from CONAPO) in charge of their design and implementation have been health institutions. Together, the Secretary of Health (SS: Secretaría de Salud) and the Mexican Institute of Social Security (IMSS: Instituto Mexicano de Seguridad Social) have been the two major players in terms of policy making and service provision (CONAPO, 1995).

It has been also customary, for the past 30 years, that the National Population Program include, in its general objectives, population growth goals to be achieved within certain time periods. These population growth goals are then translated into total fertility goals, which in turn serve as the basis for determining the amount of contraceptive prevalence that would be required for reaching such a level of fertility. The Interinstitutional Program of Family Planning is developed by the public medical institutions that provide these services in Mexico, and under the coordination of the Council. These, so called, intersectorial meetings are responsible for determining the national and regional contraceptive prevalence goals by institution and method, which in turn is converted into specific contraceptive goals to be achieved by each public medical institution (CONAPO, 1975, 1978, 1985, 1990, 1991, and 1995).

Although there has never been an open, public, and explicit establishment of institutional contraceptive quotas in Mexico, the bureaucratic unfolding of quantitative population growth goals, and there subsequent translation into fertility, and national contraceptive prevalence levels generates, I contend, an implicit institutional quota system of general and specific prevalence by contraceptive method.

Three years after the launching of the National Family Planning Program, public health institutions provided 51.1% of all modern methods being used in Mexico. By the year of 1997, governmental institutions covered almost three-quarters (72.5%) of modern contraceptive coverage. This important growth in public service provision was conversely followed by a decline in the participation of private sources (from 48.9% to 27.5%) (Table 9, Graph 13).

Of all public institutions, IMSS has been by far the most prominent provider of modern contraception, followed by the SS. In 1979, IMSS covered 28% of all modern contraceptors and increased to 42% by 1997. By comparison the SS grew from 14% to 20%, during the same period. The general decline in the participation of the private sector, largely can be attributed to the decline in pharmacies as providers of modern methods (Table 9, Graph 14), and can be associated to the important decline in the use of the pill (Table 8, Graph 12).

The fact that certain reproductive decisions have experienced a process of institutionalization, means that the exercise of the right to decide over the number of children to have and when to have them now depends, at least partially, on the logic, structure, procedures, and intentionality of governmental medical

institutions who have the legal charge to provide with family planning and reproductive health services, and thus become the contexts within which reproductive decisions might be actualized, planned or very frequently even elaborated.

As bureaucratic institutions, these medical organizations that are responsible for managing the regulation of fertility and for delivering the fertility component of population growth targets, share certain characteristics with other institutions and have aspects that set them apart.

Hierarchical discretionality and vertical functioning are two rationalities that inform the design, planning, and procedures that take place in these institutions. The way in which decisions that concern all are made, and that define the activities of the institution in general, happen from the top down. It is not only that the information flows vertically and that in the multiple steps involved its content is filtered and modified discretionally, but additionally that under the discursive title of efficiency activities and responsibilities are delegated down, and when the moment allows or demands blame is also transferred in that direction. In one complex yet constant movement, the top hierarchies keep crucial, damaging, or compromising information away from the rest of the members of the institution and find, open, or create mechanisms of displacing blame in the face of mistakes or institutional failures (Litrell, et al., 1983; Williams, et al., 1983).

The reproduction of these institutions as bureaucratic entities rest on its normativity and on its administrative regulation. But the internal cohesion and the

control of its members requires of mechanisms of selective membership and forms of exclusion. In this way for example, there are no normative articles that explicitly formulate the way in which individuals, as civil servants or employees of a private institution, should associate with each other, behave to be considered a member of selective groups, or act to be perceived as committed and loyal workers to the institution and its political project. The forms are not apparent and open, the mechanisms are implicit and discursive; their vehicles are the dark and concealed word, and the spread of rumors and fragmented information (or disinformation). Their operation works on the basis of moral dichotomies that differentiate and contrapose right from wrong, the appropriate from the inappropriate, and the politically sensitive from the politically cynical (Litrell, et al. 1983). With these non-explicit criteria behavior is constantly evaluated, positions are approved or disapproved, opinions are encouraged or discarded. The morality that circulates in the hallways, and works its way in and out of offices becomes a constant gaze that hangs over every member, and is used as an instrument of behavior adjustment, control of deviance, soft coercion, and disciplinary persuasion.

The administrative tradition in Mexico, over the past five decades, is that at the end of every presidential period (every six years) all top and mid level officials are rotated or substituted (Camp, 1999). In contrast, employees below that ranking remain in the same institution and in permanent positions that either they have obtained or been politically granted. It is also a tradition that high level administrators move from one institution to another seeking opportunities for the

advancement of their political or bureaucratic careers. In tune with a long tradition of clientilistic political relations, these "career moves" are granted or made possible in a reciprocal understanding of future obligations and compensations (Meyer, 1999).

These administrative and political traditions are relevant to the extent that they bring about the lack of specialization of those individuals who actually make the central decisions in these institutions. The offices and positions that these top officials occupy are defined by the clientilistic political arrangements between different politically powerful groups, instead of by the professional qualification required for serving to the needs of specific communities or social groups in civil society.

Euphemistically, in contemporary Mexico the distinction between top or mid-level officials and the rest of the employees is known formally as the difference between "personnel you can trust" (*personal de confianza*) and base workers (*trabajadores de base*). The implication being, that the more permanent workers cannot be trusted.

As obvious as it might seem, it is necessary to say that these base workers, these salaried workers are key for the operation of the institution. They are, ultimately, the ones that make possible the realization of plans and programs, which carry out the actions of the institution. When the top hierarchy of these bureaucracies are concerned about reaching certain goals and objectives then these base workers are directly and recurrently invoked, but in the daily routines their participation becomes invisible, and the lack of recognition turns into the

norm. Without them, no program could be realized, but in the every day life discourse of the institution they are treated as substitutable or irrelevant. This is possible because ultimately the specific and contextual power of the employees does not operate from the bottom up. Officially, this route does not exist. Employees are not recognized in their capacity to participate in the generation of programs or to have the knowledge to suggest modifications or re-orientations of those in place. Their specific and contextual power, instead, is exercised in the micro world of the provision of a service, and through the social relations they establish with the public (clients, patients, patrons) (Foucault, 1980; Litrell et al., 1983).

When bureaucracies are in addition institutions that supply health services, there is a dimension that is added and that is intertwined to the exercise of power relations: the discourse, social organization, and discipline of medicine (Foucault, 1973; Turner, 1987). In the specificity of the exercise of their power administrators, health workers, and service providers count not only with the social and political support of the organization of bureaucracy, but additionally with the social and symbolic force of medical knowledge (Staum, and Larsen 1981; Turner, 1992; Zola, 1992). In the micro-physics of institutional power, the combination of those two structural conditions creates and offers, at all levels, an incredible source of legitimacy to the exercise of power, the decisions made, and the actions taken by health bureaucrats. That social authority provides with a protective shield from social questioning or public scrutiny, and minimizes the emergence of resistance from the public to the actions of the health bureaucrat.

Additionally, it provides the bureaucrat a way of understanding his place and institutional participation as a cog in a complex social machine, as well as a rationality for evaluating his actions not only as necessary, but because they provide a service, also as good (Hillier, 1982; Waitzkin, 1991).

It is also with that social legitimacy that service providers attend to the needs of the public, to the particular needs of every citizen that seeks guidance, advice, and solutions to their health problems. It is from this place of socially legitimate power that nurses and physicians listen to their patients, evaluate their health situation, diagnose their problems, and recommend a medical course of action. The exercise of this specific power is not only discretionary but also vertical, and it expresses itself as a gaze from the heights of medical knowledge that looks down upon the regular lives and daily demands of patients, and that grants little credence to their common, popular, and not specialized knowledge about their bodies, needs, and decisions (Finkler, 1991; Morgan et al., 1985a and 1985b; Waitzkin, 1991).

The contraceptive and institutional experience with surgical methods in contemporary Mexico speaks to these social processes and power dynamics, as well as to the state of reproductive rights within the public sphere.

In 1987, there were 2.3 million women in Mexico that were sterilized for contraceptive reasons. Before the surgical procedure took place, one out of four (26%) never received information regarding the existence and characteristics of other contraceptive methods, nor were they advised about the irreversible nature of tubal ligation. Two out of every five sterilized women (40%) were never asked



to sign a legal consent form, or else they were asked to sign one but was never read nor explained to them. One out of six women (17%) underwent a deficient pre-surgical medical examination or did not receive one at all. Of all sterilized women, four out of every five (79%) underwent their surgery in a governmental medical institution (Dirección General de Planificación Familiar, 1989; Figueroa, J.G., 1988 and 1990).

In a study about satisfaction and dissatisfaction in contraceptive sterilization, Tuirán (1990) found that certain variables of the reproductive decision making process were crucial for explaining the level of satisfaction women had (or reported having) about being surgically sterilized. The level of control that women had over the decision, the quality of the administrative process for informing and obtaining consent, the presence or not of negative attitudes from their husbands towards the operation were the strongest predictors of the level of post-surgical satisfaction. In 1987, women in Mexico that reported having low control over the decision, experiencing deficient administrative consent procedures, and having husbands who had negative feelings towards the operation presented the highest levels of dissatisfaction with being surgically sterilized.

Who can be sure that inside the social spaces of medical offices, clinics, and hospitals where crucial reproductive decisions are made and realized health service providers are preoccupied about responding to the demands and needs of women, couples, and patients in general? Who can assure us that the employees of medical institutions in Mexico, who are in active and constant contact with the

public are advising, suggesting, and prescribing thinking about the reproductive rights of their patients as citizens of Mexico?

Already in 1987, the analysis of the data on sterilization in the country suggested a negative evaluation of the service provided by governmental medical institutions. Not only did they provide a deficient service to patients from a medical perspective, but the administrative process for assuring that women's election was based on an informed consent suggested important flaws and violations of norms and procedural standards (Figueroa, 1990; Tuirán, 1990). Overall, in the late eighties, surgical contraception in governmental institutions did not tend to develop in a context that respected the rights of women and allowed unrestrained exercise of their reproductive rights.

In more recent years, the work of different non-governmental organizations have produced compilations of numerous testimonies of individual rights violations. These NGOs have been instrumental for the organization of women's groups, providing them with legal support and advice for launching public complaints and preparing law suits against public medical institutions. The cases are very diverse and range in the type of reproductive rights violation. From complaints of medical service deficiencies with health consequences to the post-partum insertion of IUDs without the consent of women. From disrespectful treatment and health care negligence to non-authorized surgical sterilization. As a group, the 55 cases made public in 1997 cannot be linked to a single clinic, hospital or medical institution. The strength of their documentation, however, lies in the fact that they point to a pattern of diverse violations that expands across all

types of units, and health personnel, and that it involves all governmental institutions (Red de Salud de las Mujeres del D.F., 1997a).

To those cases that largely occurred within Mexico City, we have to add (unfortunately) the systematic and institutionally orchestrated violation suffered by different groups of women, in small rural towns across the country, in the mid-nineties.

The most known and well-documented case happened in San Miguel Pocitos (state of Puebla), during the months of May and June of 1996. The story hit the newspapers in the middle of August. A group of women were diagnosed with pelvic inflammatory disease caused by the presence of IUDs, which were inserted in their uteruses without their consent, and during a supposedly routine pelvic examination by a medical mobile unit of governmental health service providers, that belonged to the Mexican Institute of Social Security (IMSS). The case became known across the country because a congressman exposed and denounced it in the Chamber of Deputies, the Lower House of Mexico's Congress. The congressman launched a legal suit against the institution and the directly responsible medical personnel, on behalf of the 54 women who became victims of the abuse and rights violation (Red de Salud de las Mujeres del D.F., 1997a and 1997b)<sup>10</sup>.

"Family planning employees ... can be seen as semi-autonomous social units that mediate between the public world of the bureaucracy and the private world of sexuality and reproduction" (Tuirán, R., 1988:49). In their activities at

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<sup>10</sup> Similar experiences, but with fewer cases have been reported to have occurred during the first six months of 1997, in the states of Chiapas, Guerrero, Oaxaca, and Veracruz. The reports came from two newspapers with national circulation: La Jornada and Reforma.

work, and from their structural condition of salaried workers, health providers reproduce the institutional norms and regulations when following instructions, carrying-out their daily tasks and completing a work schedule. As reactive social agents they can resist the arbitrary forms of the bureaucratic management, and try to protect themselves from the delegation of responsibilities and the assignment of institutional blame. As public servants and in their function as providers of a specific service, they reproduce the intentionality of fertility control programs when convincing patients to become contraceptors, with the intention of fulfilling implicit institutional quotas. As health workers and in the daily exercise of their specific power they reproduce the vertical orientation of fertility control programs when they subordinate the needs and rights of patients, but particularly of women, to the rationality of institutions and medicine, and to the demands of quantitatively defined population goals.

The problem, however, should not be reduced to one of good or bad will. The problem, I am suggesting, is not even necessarily linked to the professional qualifications of physicians, nurses, and social workers<sup>11</sup>. Even with the best of training, and the best of personal intentions health providers are embedded in institutional contexts with internal rules and regulations, predetermined agendas, and systems of control. With varying amounts of resources and differential powers, these health workers are embedded in bureaucratic institutions (in the weberian and foucaultian sense, as well) that work as organic wholes in the

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<sup>11</sup> The results of a 1988 national survey revealed (Dirección General de Planificación Familiar, 1988), for example, that the level of knowledge of health providers working for the Secretary of Health (SS) was deficient when compared to the minimum standards that the institution had set for itself. Nevertheless, the point made here is not of qualifications, but of institutional constraints over the actions, and the will of individual health workers.

pursuit of predetermined objectives, and where concepts like loyalty, commitment, and belonging are used as political mechanisms to create links between high, middle, and base level bureaucrats, and to generate institutional hermeticism, internal cohesion, and organizational discipline. The problem is that regardless of the good or bad will, of the qualifications of service providers, of the mistakes that individuals can make or are exposed to the risk of making, the structure and the system of public medical institutions in Mexico is more conducive and prone to establish authoritarian social relations with the public, than to generate social relations based on intersubjective consideration and respect for the needs, rights, and decisions of individual citizens.

## **Conclusion**

In this dissertation I presented and articulated the results of the study I conducted on the relationship between reproductive rights, and population policies. I did so, in three interconnected, yet distinctive parts. First, I offered an intervention in the contemporary theoretical debate about the need, validity, foundations, and universal capacity of human rights. Second, I developed an analytical framework for the study of reproductive rights and their relation to population policies, as a set of normative standards created internationally and translated within the context of individual nation states. Third, I used this framework and its analytical proposals to study the case of contemporary Mexico, which uniquely combines a liberal national entitlement of reproductive rights and a population policy that has been enforced in an authoritarian fashion.

The current debate about human rights, that I explore in chapter one, is theoretically complex because it involves multiple and simultaneous realms of the sociological, political, legal, and philosophical. No one that believes in global social justice today can deny the practical-political and normative-legal importance of human rights for the protection of individuals, minorities, and the socially disadvantaged in the world. Yet, beyond this general recognition, they have been called into question many times and on many fronts. They have been characterized as legally naive and politically ineffectual for their inability to stop atrocities and genocides, years and decades after they were established and approved by the United Nations. They have been described as ethnocentric and

deemed to work as instruments of domination of the West over the rest of the world, rather than protecting and allowing the empowerment of people around the globe.

But, even among those that are largely sympathetic to the spirit and intentions of the international charter, there are many that see no reason for engaging theoretical reflection about human rights, and call instead for practical approaches, and for political solutions.

While identifying universality and foundations as two global fundamental issues to be explored and debated, I have contended, however, that theorizing about human rights is not only useful but actually indispensable. Practical agreements are for the actualization of rights, no doubt, crucial. But alone, they do not provide with the guidance that is required in moments of paradigmatic crises.

The difficulties of engaging the debate about universality and foundations should not dissuade us away from it. The question of how to intervene in these debates without falling into essentialist traps, is not an easy riddle to solve. I have not suggested nor presented a way to resolve the problems regarding universality and foundations. From some perspectives this might be seen as a limitation of the exploration presented here. And in some sense it is.

I suggest, however, that discourse ethics represents a solid and interesting approach capable of offering some solutions to these problems, because it is concerned simultaneously about issues of content, and on the conditions under which these substantive discussions happen. Discourse ethics, I believe, provides

for mechanisms of avoiding essentialist positions, while allowing for substantive interventions.

In chapter two, I developed a series of arguments and put forward some theoretical elaborations with the intention of offering a sociological framework for the analysis of the reproductive rights in their different social, political and legal dimensions, both at an international level and within specific national contexts.

Using Habermas' "ideal speech situation", I reconstructed the "ideal reproductive decision-making process", informed both by human rights standards of social justice, and feminist theory. This ideal normative reconstruction identifies the process of making autonomous, unrestricted, and informed decisions, both in the private and the public sphere, as the center of the exercise of reproductive rights.

Once I established the ideal normative, my analysis turned to the factors that might impede the full realization of these rights. Within the contexts of nation states, I find two sources of disturbances: power relations and social inequality. Both power and inequality create profound distortions to the decision making process in the private, as well as in the public domain.

From a cognitive point of view, the object is to contribute to the expansion and development of this field of study, as well as to participate in the consolidation of an emergent academic community interested in studying population policies from a critique of power relations.



From a political point of view, the proposal seeks to offer some analytical guidelines to civil organizations that work in favor of the protection and defense of reproductive rights and on the generation of processes that can empower individual citizens and groups.

This analytical framework was applied, in chapter three, to the case of contemporary Mexico.

With the approval of the General Law of Population in 1973, Mexico experienced a paradigmatic change in the state's orientation and perception of the relation between development and population growth. The size and distribution of the population was no longer seen as a necessary condition for the consolidation of the nation. Instead, following neo-Malthusian interpretations, population growth was regarded as a major obstacle to social and economic development, and as an impediment for modernizing the country.

This legal initiative, that came from the executive branch of government and was fully endorsed by the legislative, established the current content and orientation of population policies at the same time that it defined reproductive rights in Mexico.

The importance of fertility in determining the rates of population growth in the latter part of the 20th century, made the control of fertility the main goal of population policies efforts. In effect, with the launching of the National Family Planning Program in the mid-seventies governmental medical institutions became responsible for enacting fertility control policies and for achieving programmatic goals of growth.

The impact of these policies from the seventies through the nineties has been significant. In the span of three decades, fertility levels have been reduced in more than half, and contraceptive use has more than doubled.

To what extent have these policy and demographic changes occurred following what the own General Law of Population defines as inalienable reproductive rights? Using available data from national surveys, and a reconstruction of the institutional process of policy design and implementation, I examine the situation of reproductive rights in the public domain of medical institutions.

The data from demographic and contraceptive prevalence surveys, suggest that violations of reproductive rights have occurred in Mexico within public medical institutions.

Data provided by a national fertility survey in 1987, allowed the evaluation of medical services, administrative procedures, and reproductive decisions for women that had undergone surgical sterilization. Significant proportions of women experienced deficient medical services and violations of the procedural codes for assuring informed consent. Throughout the nineties, reports and testimonies compiled by non-governmental organizations (that were publicly denounced and legally pursued) have also documented rights violations in surgical and other forms of contraception, such as IUDs. Additional cases of groups of women in small rural towns, in 1996 and 1997, revealed further violations and institutional practices of organized deceit.

While I found no evidence to support the claim that the violations have been massive, there is enough data to argue that they have been, however, systematic. In other words, the data suggest that these violations are not just clusters of mistakes in the provision of services or a series of random events product of individual cases of medical negligence. They suggest patterns of institutional disregard.

The establishment of population growth goals, and their bureaucratic translation into fertility and contraceptive targets is problematic for reproductive rights in Mexico. Alone, they cannot be blamed for the violation of reproductive rights. However, the implementation of aggressive family planning programs with instrumental objectives, and under the responsibility of medical bureaucracies has resulted in the formation of a public space more conducive to authoritarian practices that violate rights, than to one that respects and fosters the unrestrained exercise of reproductive rights.

Perhaps we can accuse administrative elites of allowing aggressive family planning programs that have been a threat to reproductive self-determination. We might also accuse them of dismissing and ignoring claims when violations were perpetrated, and of not being responsive to complaints and protests. We can charge the government for not listening to critiques from civil associations and feminist organizations that have been constantly denouncing zealous institutions and physicians that curtail reproductive freedom and choices. But, I find no evidence to suggest that a national campaign to control fertility was launched and

implemented knowing that it would violate reproductive rights and trample the will of individual citizens.

Further examination and research on the situation of reproductive rights in Mexico, is required. For this, however, there is need of more and different kind of data. On the one hand, there is an urgent need for comprehensive data on the institutional practices of service provision, and on the level of compliance to rules and procedures that protect autonomous reproductive decisions. On the other, there is a serious need for qualitative research and case studies examining the decision-making processes both in the private and in the public realm, and by studying the effects of social inequality.

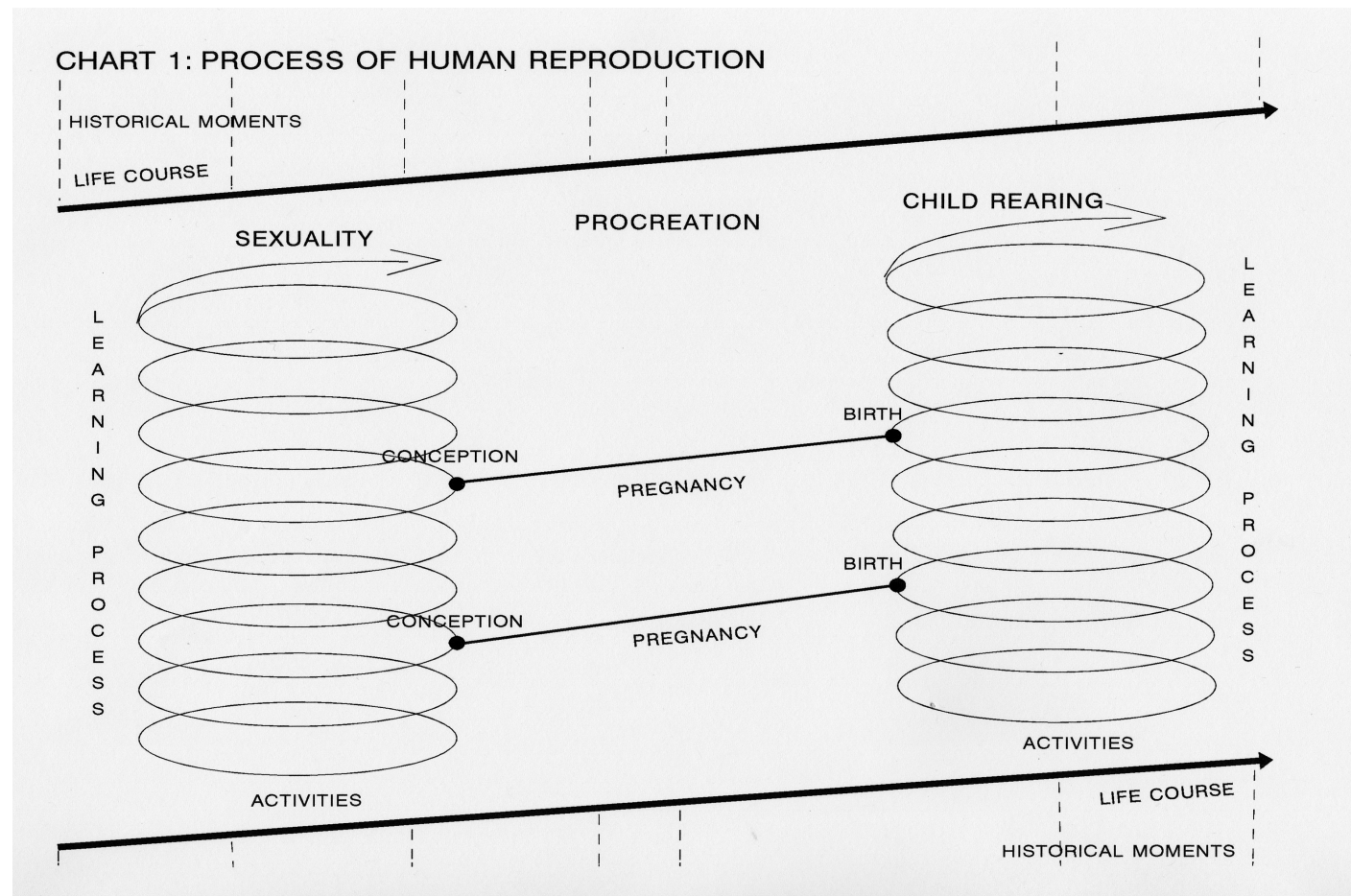
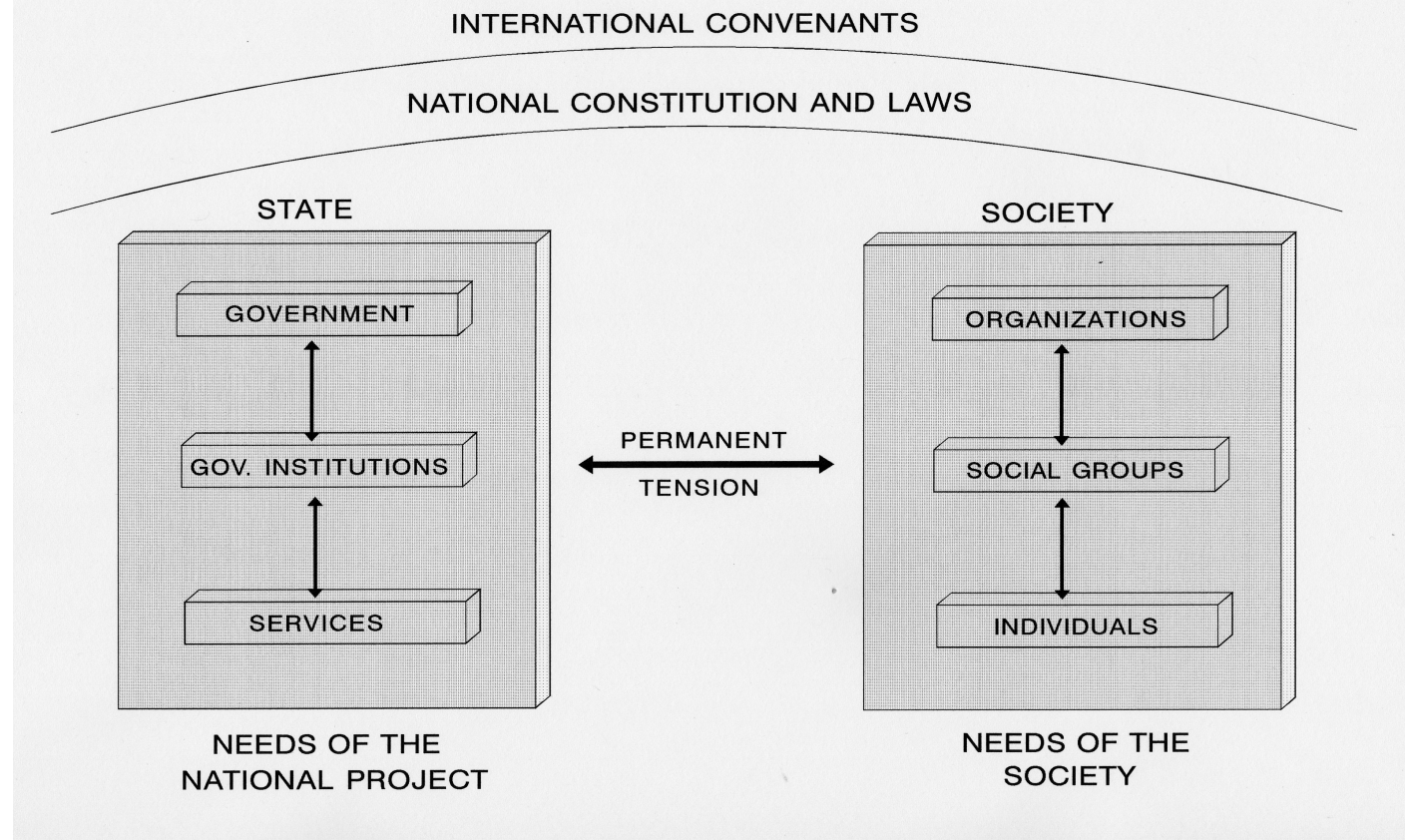
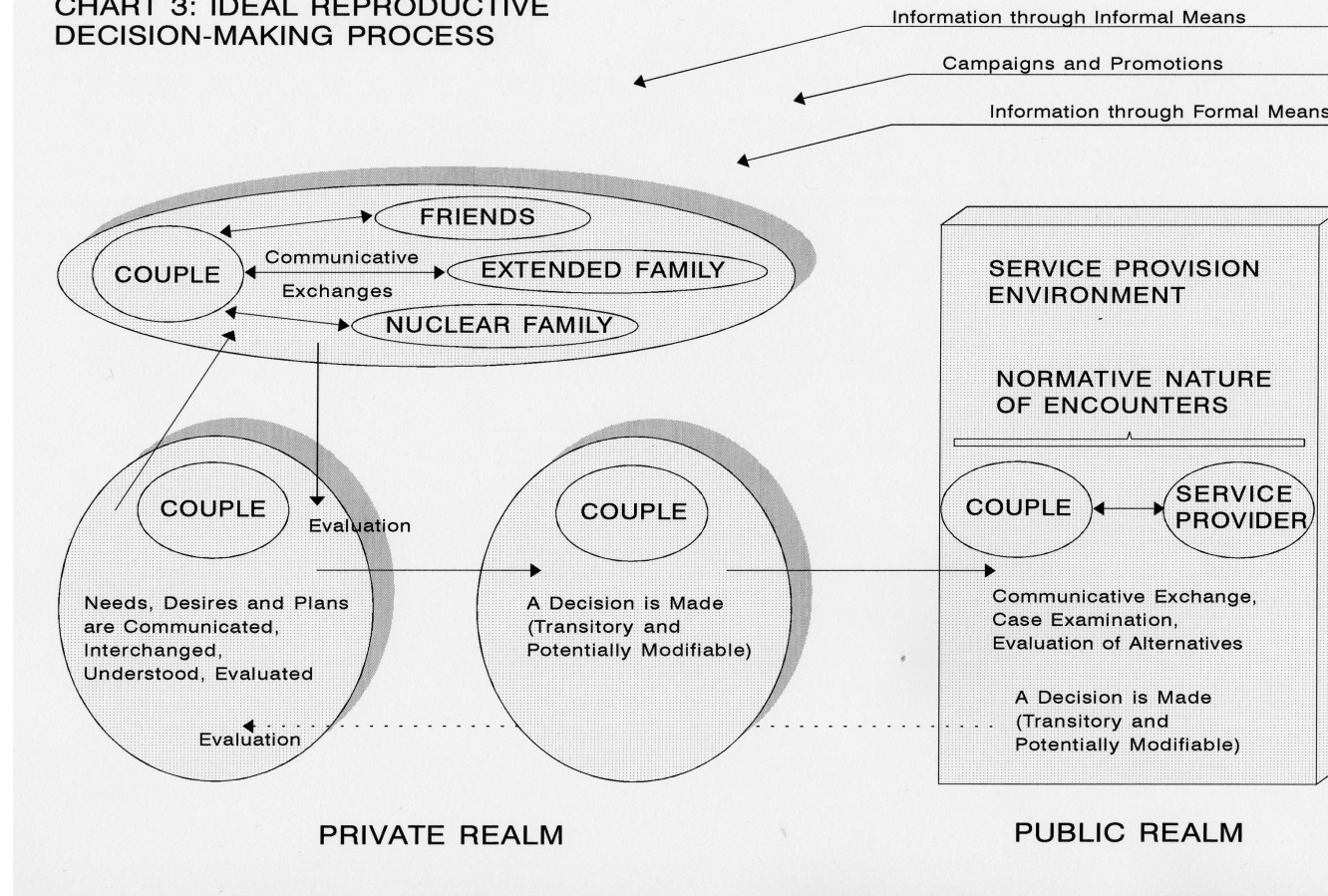


CHART 2: RIGHTS WITHIN NATIONS



**CHART 3: IDEAL REPRODUCTIVE  
DECISION-MAKING PROCESS**



**CHART 4: DISTURBANCES IN THE IDEAL  
DECISION-MAKING PROCESS**

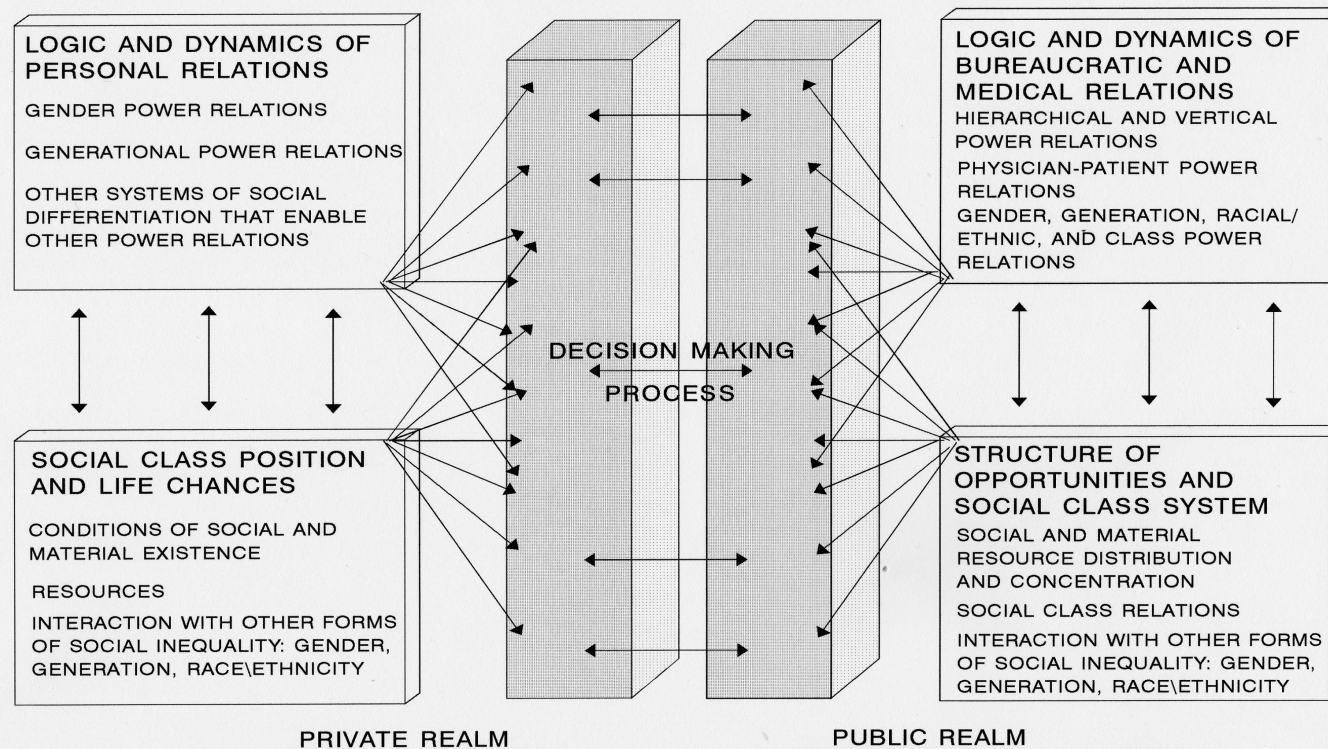




Table 1: Contraceptive Prevalence Among Married Women, 15-49 Years of Age  
By Selected Characteristics. Mexico, 1976-1997

<i>Prevalence</i>	<i>1976</i>	<i>1979</i>	<i>1982</i>	<i>1987</i>	<i>1992</i>	<i>1995</i>	<i>1997</i>
<i>By Type of Method</i>							
Modern Methods	23.1	32.0	41.5	44.8	55.0	57.5	59.2
Any Method	30.2	37.8	47.7	52.7	63.1	66.5	68.5
<i>By Age Groups</i>							
15 - 19	14.2	19.2	20.8	30.2	36.4	36.1	45.0
20 - 24	26.7	37.4	45.7	46.9	55.4	57.1	59.3
25 - 29	38.6	44.5	56.5	54.0	65.7	67.7	67.8
30 - 34	38.0	49.6	59.8	62.3	70.1	75.2	75.4
35 - 39	37.9	42.8	57.6	61.3	72.6	78.8	76.1
40 - 44	25.1	33.3	42.9	60.2	67.4	70.8	74.5
45 - 49	11.8	16.3	22.1	34.2	50.5	53.1	61.4
<i>By Number of Children</i>							
None	6.5	8.3	12.6	15.3	20.7	17.5	23.9
One	27.2	28.8	34.4	50.5	56.6	59.2	59.8
Two	39.1	42.8	51.9	60.0	71.0	77.3	75.4
Three	38.4	42.9	54.0	67.5	75.0	72.0	80.6
Four and more	29.6	36.2	46.1	51.3	62.6	70.3	70.4
<i>By Place of Residence</i>							
Rural	13.7	27.4	29.8	32.5	44.6	52.7	53.6
Urban	42.1	45.2	57.8	61.5	70.1	71.3	73.3
<i>By Formal Education</i>							
No Schooling	12.8	20.3	32.6	23.7	38.2	48.4	48.0
Incomplete Elementary	25.5	32.0	42.9	44.8	56.4	58.2	61.3
Complete Elementary	40.3	49.6	51.2	62.0	66.7	67.8	69.8
Junior High or more	55.8	59.0	61.7	69.9	73.6	73.3	74.8

Source: EMF 1976, ENPUA 1979, END 1982, ENFES 1987, ENADID 1992 & 1997, ENPF 1995, CONAPO 1999. For complete references see footnote 8.

Table 2: Contraceptive Knowledge: Percentage of Women, 15-49 Years of Age,  
That Know at Least One Contraceptive By Selected Characteristics.  
Mexico, 1976-1997

	1976	1979	1987	1992	1995	1997
<i>Total</i>	89.0	85.9	92.9	94.9	93.1	96.6
<i>Groups of Age</i>						
15 - 19	79.8	73.6	89.8	90.9	86.4	93.4
20 - 24	88.8	88.4	94.0	96.1	95.2	96.8
25 - 29	93.1	91.7	95.2	97.1	96.0	98.1
30 - 34	91.3	92.0	94.3	97.5	95.6	97.9
35 - 39	89.7	90.4	92.6	95.9	97.7	97.3
40 - 44	86.1	87.7	93.3	95.4	92.9	97.4
45 - 49	85.9	86.6	92.5	93.1	87.9	95.7
<i>Number of Children</i>						
None	86.6	76.5	91.3	92.5	89.1	94.0
One	89.7	90.0	94.3	96.7	94.2	98.2
Two	91.8	91.9	95.5	97.8	97.7	99.0
Three	91.3	91.8	95.2	97.6	95.4	98.8
Four and more	88.6	90.2	92.4	94.7	94.4	96.5
<i>Formal Education</i>						
No Schooling	73.7	75.0	72.9	79.5	75.5	82.3
Incomplete Elementary	88.9	82.2	90.3	92.7	91.3	93.7
Complete Elementary	95.6	89.2	95.4	95.1	91.4	95.8
Junior High and more	99.1	95.1	98.9	98.7	96.7	99.3
<i>Place of Residence</i>						
Rural	78.6	73.8	83.1	86.5	85.7	90.0
Urban	95.8	92.5	96.4	97.7	95.6	98.4

Source: EMF 1976, ENPUA 1979, ENFES 1987, ENADID 1992 & 1997,  
ENPF 1995, CONAPO 1999. For complete references see footnote 8.

Table 3: Fertility Rates: Age Specific and Total. Mexico, 1965 - 1995

	<i>1965</i>	<i>1970</i>	<i>1975</i>	<i>1980</i>	<i>1985</i>	<i>1990</i>	<i>1995</i>
<i>Age Groups</i>							
15 - 19	140	126	105	106	89	81	72
20 - 24	315	306	276	203	202	178	155
25 - 29	340	326	269	211	203	169	153
30 - 34	275	279	231	172	142	120	108
35 - 39	226	196	173	122	106	75	61
40 - 44	115	115	74	43	35	21	23
<i>Total Fertility Rate</i>	<i>7.1</i>	<i>6.7</i>	<i>5.6</i>	<i>4.3</i>	<i>3.9</i>	<i>3.2</i>	<i>2.9</i>

Source: EMF 1976, END 1982, ENFES 1987, ENADID 1992, ENPF 1995, Welti, 1997. For complete references see footnote 8.

Table 4: Total Fertility Rates By Place of Residence: Rural and Urban. Mexico, 1974-1999

	<i>1974</i>	<i>1980</i>	<i>1985</i>	<i>1990</i>	<i>1996</i>
<i>Place of Residence</i>					
Rural	7.4	6.8	6.0	4.8	3.5
Urban	5.0	4.0	3.3	2.9	2.3

Source: EMF 1976, END 1982, ENFES 1987, ENADID 1992 & 1997, ENPF 1995, CONAPO 1999. For complete references see footnote 8.

Table 5: Total Fertility Rates By Formal Education. Mexico, 1974-1999

	<i>1974</i>	<i>1980</i>	<i>1985</i>	<i>1990</i>	<i>1996</i>
<i>Formal Education</i>					
No Schooling	7.8	6.9	6.2	5.0	4.7
Incomplete Elementary	7.0	5.9	5.3	4.5	3.7
Complete Elementary	4.9	4.0	3.9	3.4	3.1
Junior High and More	3.5	2.8	2.6	2.5	2.2

Source: EMF 1976, END 1982, ENFES 1987, ENADID 1992 & 1997, ENPF 1995, CONAPO 1999. For complete references see footnote 8.

Table 6: Total Fertility Rates By Labor Market Participation. Mexico, 1974-1999

	<i>1974</i>	<i>1980</i>	<i>1985</i>	<i>1990</i>	<i>1996</i>
<i>Labor Market Participiaption</i>					
Participates	3.8	3.6	2.8	2.2	2.0
Does Not Participate	6.9	5.4	4.7	4.0	3.4

Source: EMF 1976, END 1982, ENFES 1987, ENADID 1992 & 1997, ENPF 1995, CONAPO 1999. For complete references see footnote 8.

Table 7: Total Fertility Rates By Labor Market Participation and Place of Residence: Rural and Urban Mexico, 1974-1999

	1974	1980	1985	1990	1996
<i>Labor Market Participation</i>					
<i>Rural Place of Residence</i>					
Participates	5.5	5.5	5.0	4.0	2.8
Does Not Participate	7.8	7.2	6.3	5.0	3.9
<i>Labor Market Participation</i>					
<i>Urban Place of Residence</i>					
Participates	3.0	2.7	2.3	1.9	1.7
Does Not Participate	5.9	4.6	4.0	3.6	3.0

Source: EMF 1976, END 1982, ENFES 1987, ENADID 1992 & 1997, ENPF 1995, CONAPO 1999. For complete references see footnote 8.

Table 8: Contraceptive Usage Among Married Women, 15-49 Years of Age, By Type of Method Used. Mexico, 1976-1997

	1976	1979	1982	1987	1992	1995	1997
<i>Method Used</i>							
The Pill	35.9	33.0	29.7	18.2	15.3	12.7	10.2
IUD	18.7	16.1	13.8	19.4	17.7	22.3	20.8
Female Operation	8.9	23.5	28.1	36.2	43.3	41.4	44.7
Male Operation	0.6	0.6	0.7	1.5	1.4	0.9	1.8
Injections	5.6	6.7	10.6	5.3	5.1	4.6	4.6
Condoms, Jellies & Foams	7.0	5.0	4.1	4.7	5.0	5.0	5.7
Traditional Methods	23.3	15.1	13.0	14.7	12.2	13.1	12.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

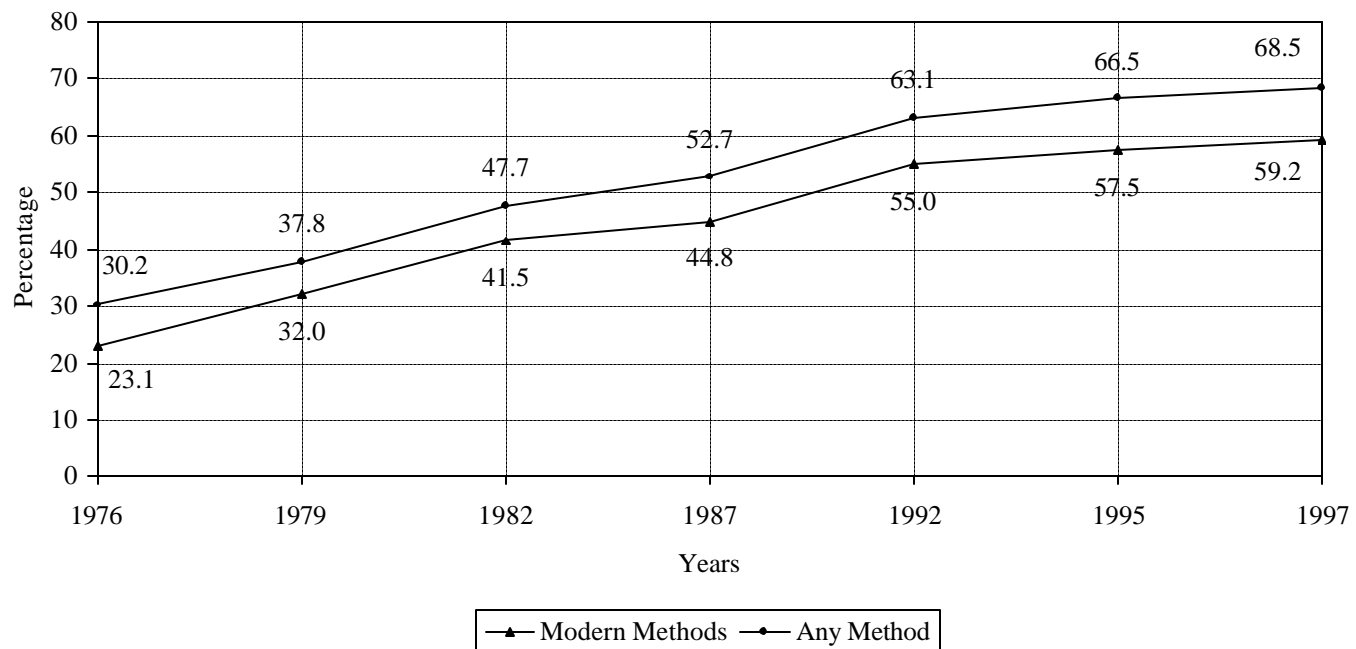
Source: EMF 1976, ENPUA 1979, END 1982, ENFES 1987, ENADID 1992 & 1997, . ENPF 1995, CONAPO 1999. For complete references see footnote 8.

Table 9: Modern Method Contraceptive Usage Among Women, 15 through 49  
Years of Age, By Institutional Source. Mexico, 1976-1997

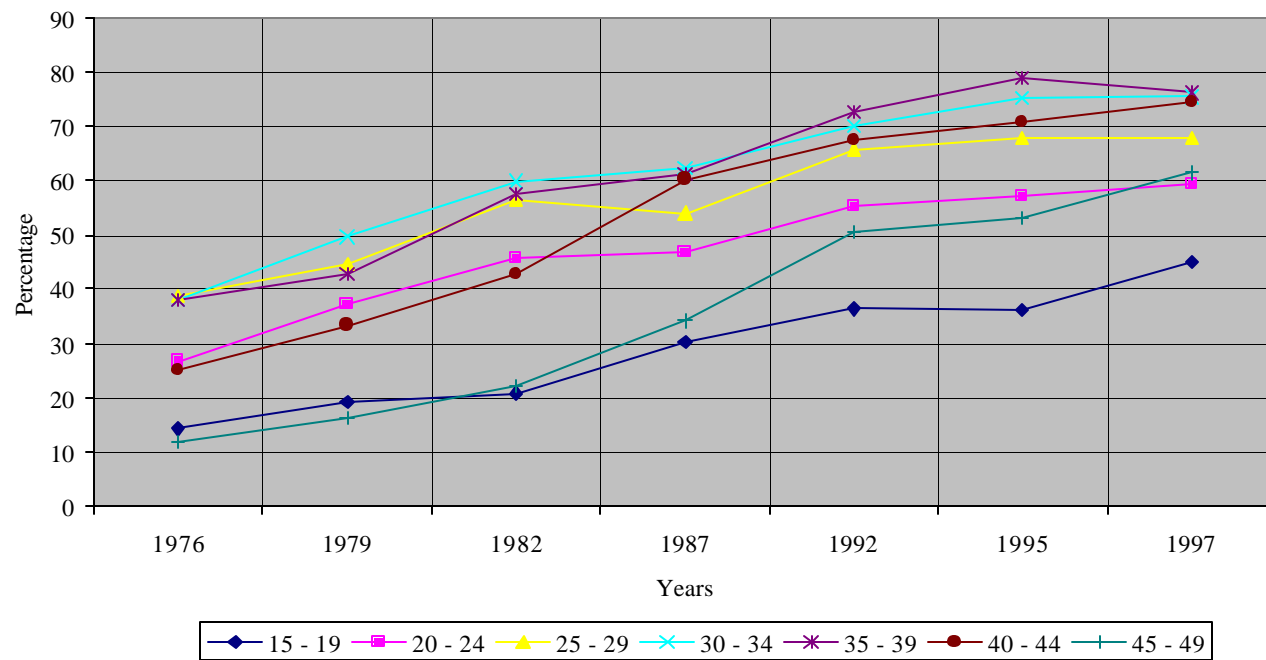
	<i>1979</i>	<i>1982</i>	<i>1987</i>	<i>1992</i>	<i>1995</i>	<i>1997</i>
<i>Public Institution</i>	51.1	53.4	61.9	66.6	71.3	72.5
IMSS	27.9	32.3	37.5	41.4	44.3	41.6
ISSSTE	3.9	4.9	5.4	4.3	3.6	4.6
SSA	14.7	14.5	15.5	15.0	16.5	19.6
Other Public	4.6	1.7	3.5	5.9	6.9	6.8
<i>Private Institution</i>	48.9	46.6	38.1	33.4	28.7	27.5
Pharmacy	31.3	31.3	21.9	18.6	15.8	13.8
Medical Office	15.4	14.2	14.3	14.1	12.2	13.6
Other Private	2.2	1.1	1.9	0.7	0.7	0.2
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source: ENPUA 1979, END 1982, ENFES 1987, ENADID 1992 & 1997,  
ENPF 1995, CONAPO 1999. For complete references see footnote 8.

Graph 1: Contraceptive Prevalence By Type of Method  
Among Married Women, 15-49 Years of Age.  
Mexico, 1976-1997 (Source: Table 1)

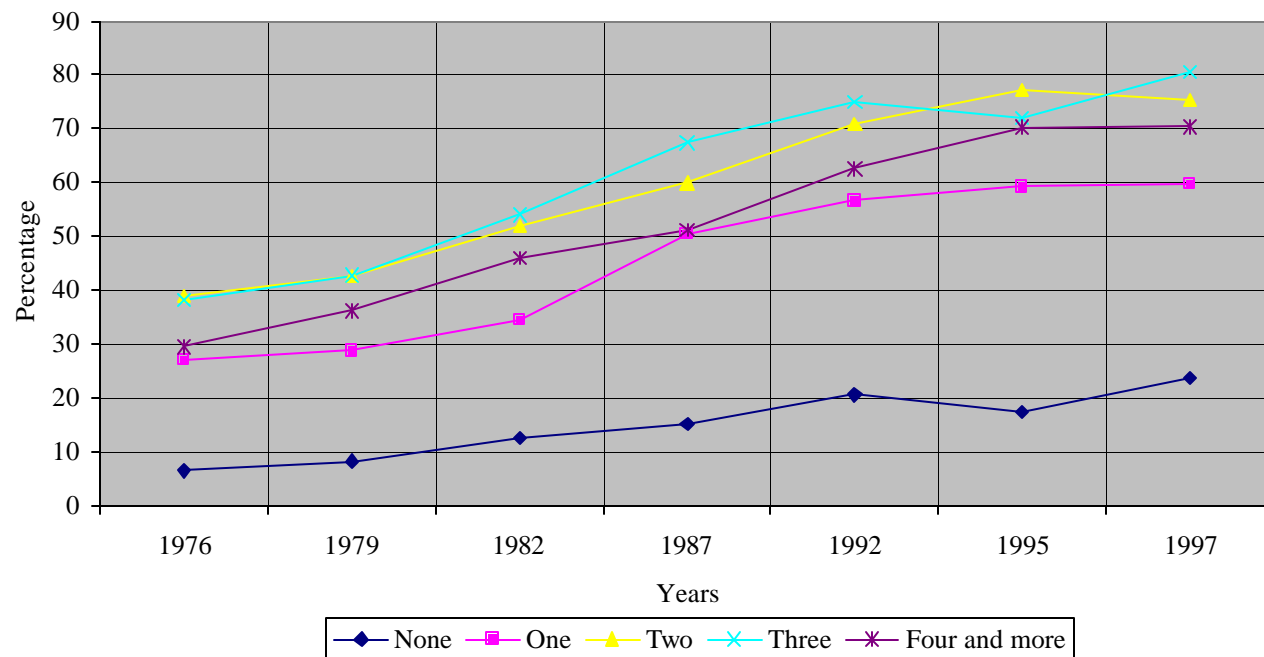


Graph 2: Contraceptive Prevalence By Age Groups  
Among Married Women, 15-49 Years of Age.  
Mexico, 1976-1997 (Source: Table 1)

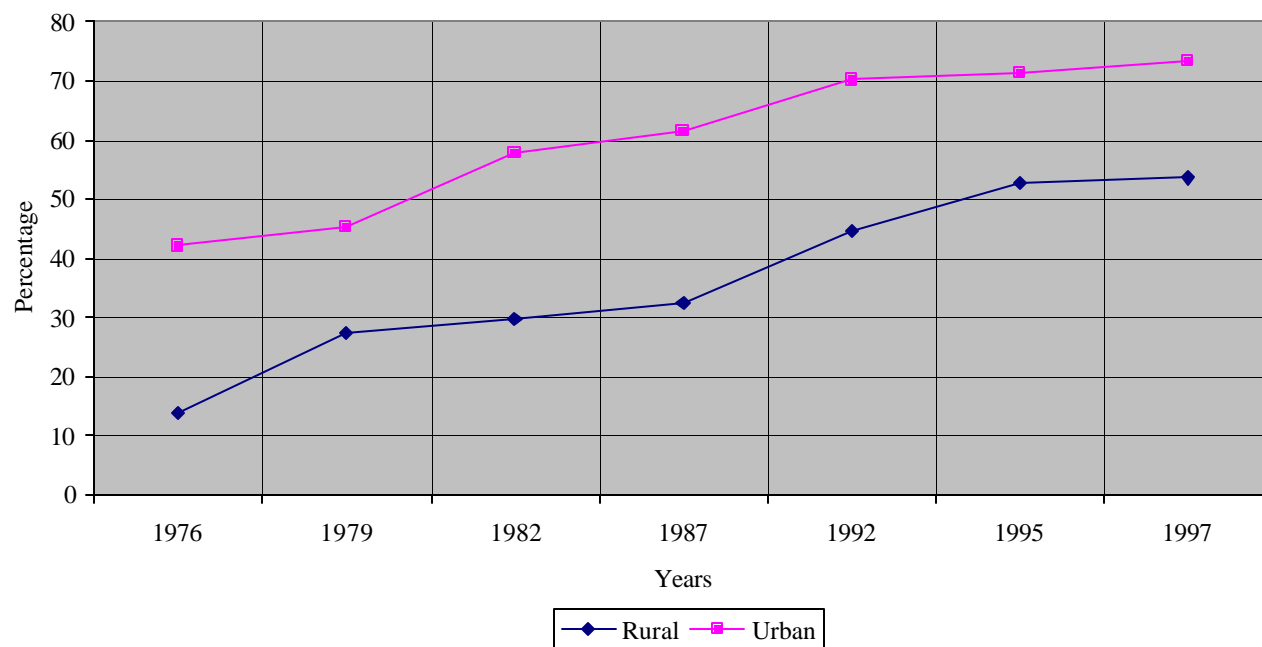




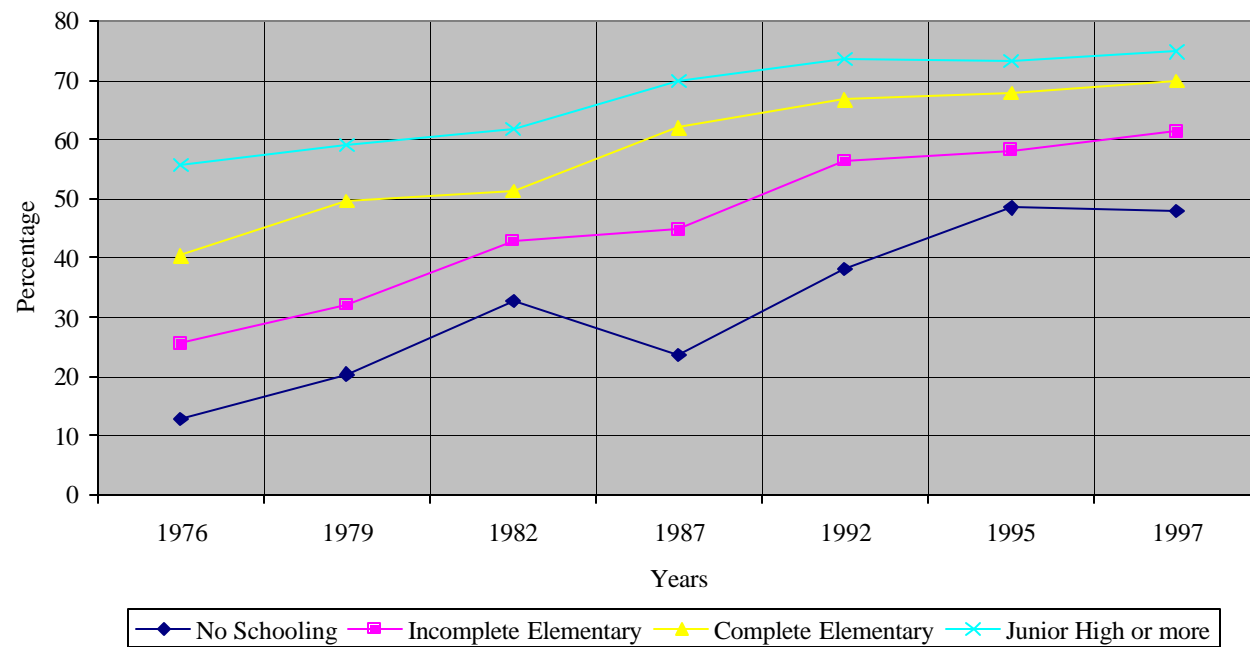
Graph 3: Contraceptive Prevalence By Number of Children  
Among Married Women, 15-49 Years of Age.  
Mexico, 1976-1997 (Source: Table 1)



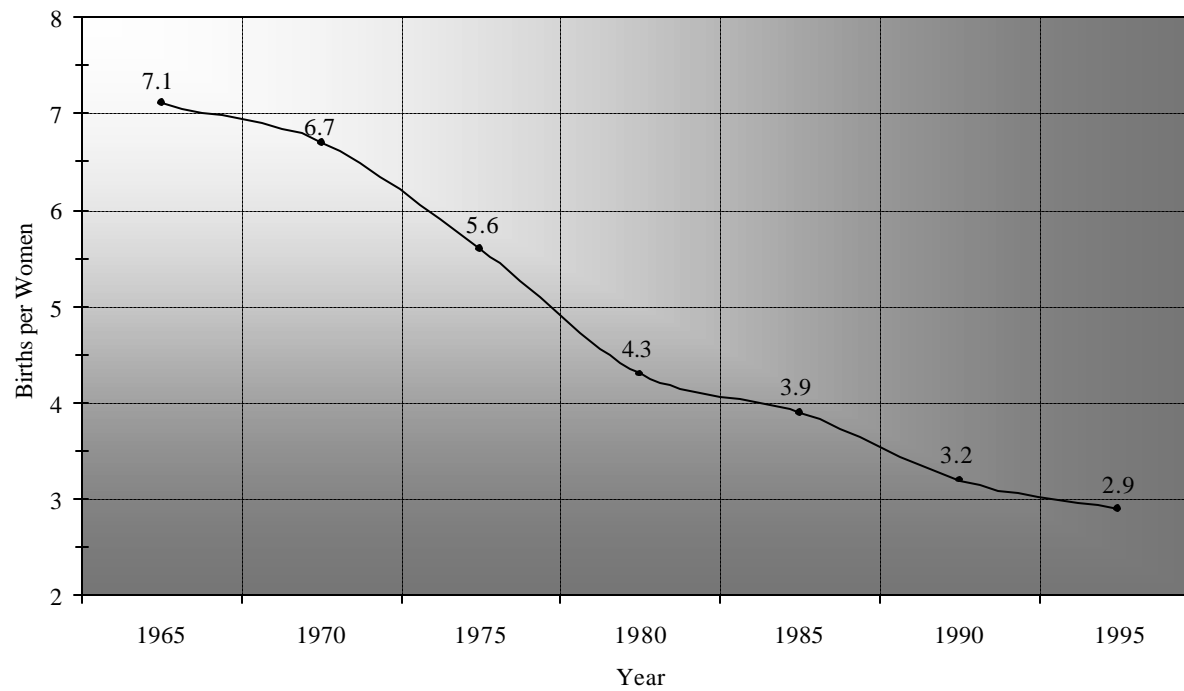
Graph 4: Contraceptive Prevalence By Place of Residence  
Among Married Women, 15-49 Years of Age.  
Mexico, 1976-1997 (Source: Table 1)



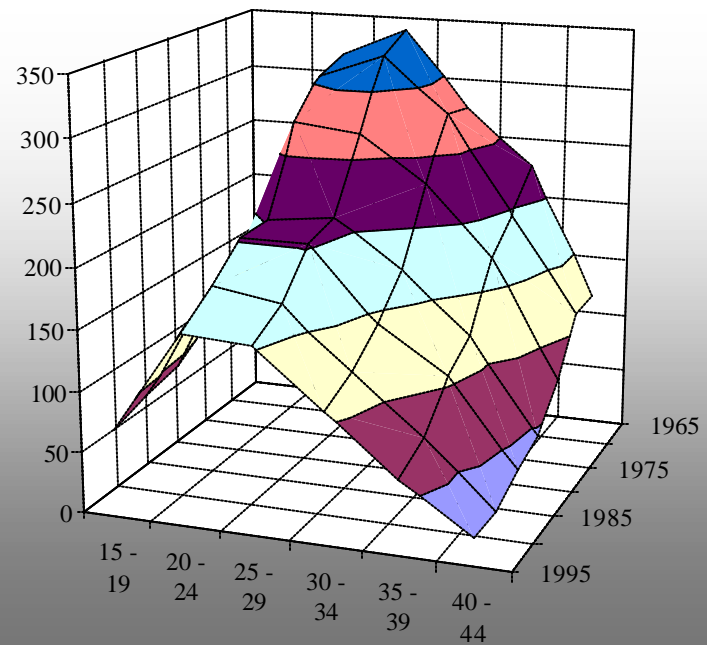
Graph 5: Contraceptive Prevalence By Formal Education  
Among Married Women, 15-49 Years of Age.  
Mexico, 1976-1997 (Source: Table 1)



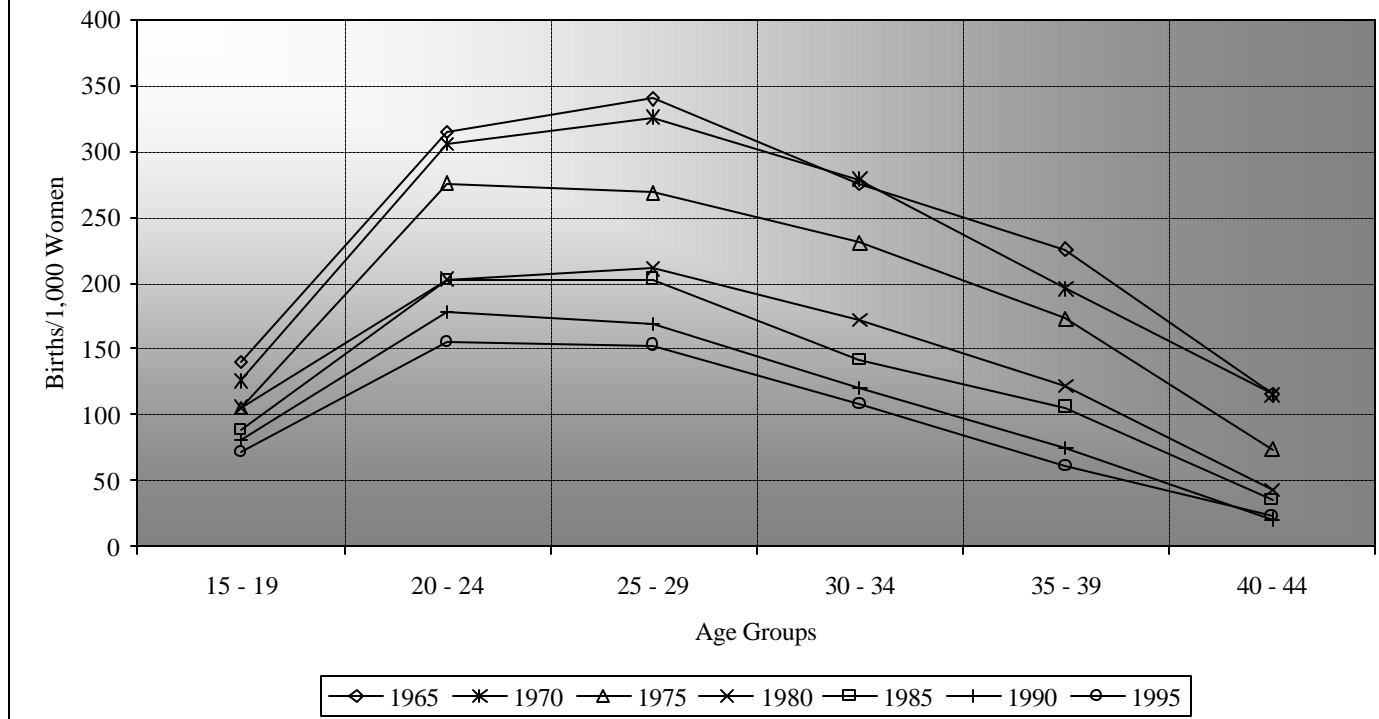
Graph 6: Total Fertility Rate.  
Mexico, 1965-1995 (Source: Table 3)



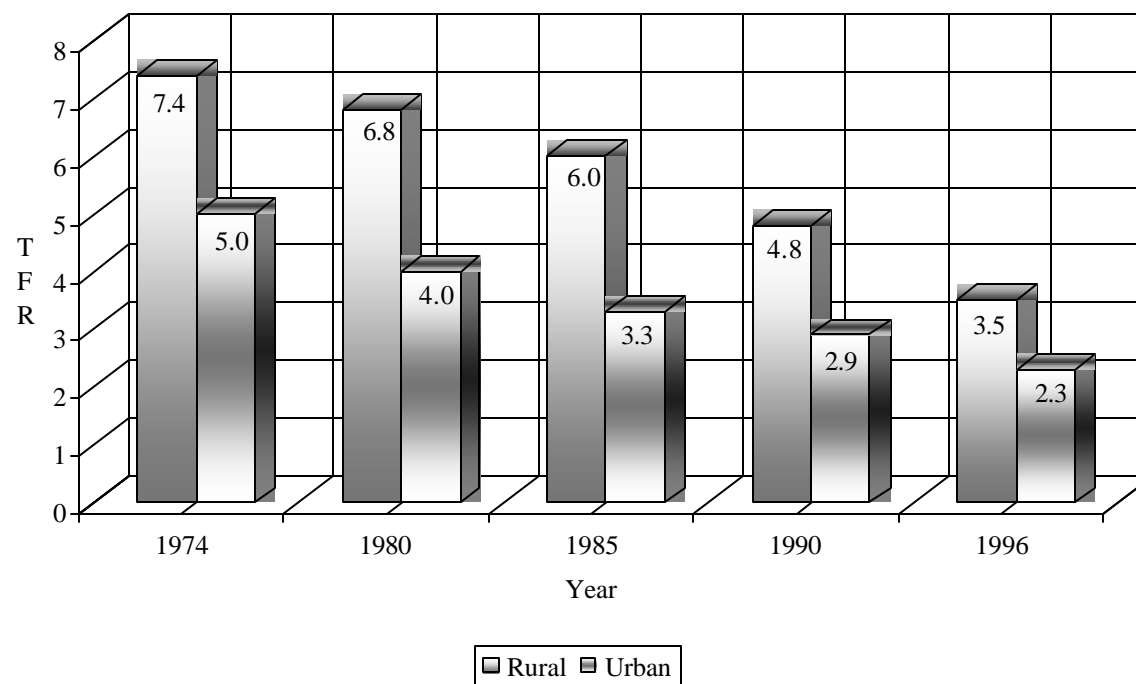
Graph 7: Age Specific Fertility Rates (15-45).  
Mexico, 1965-1995 (Source: Table 3)



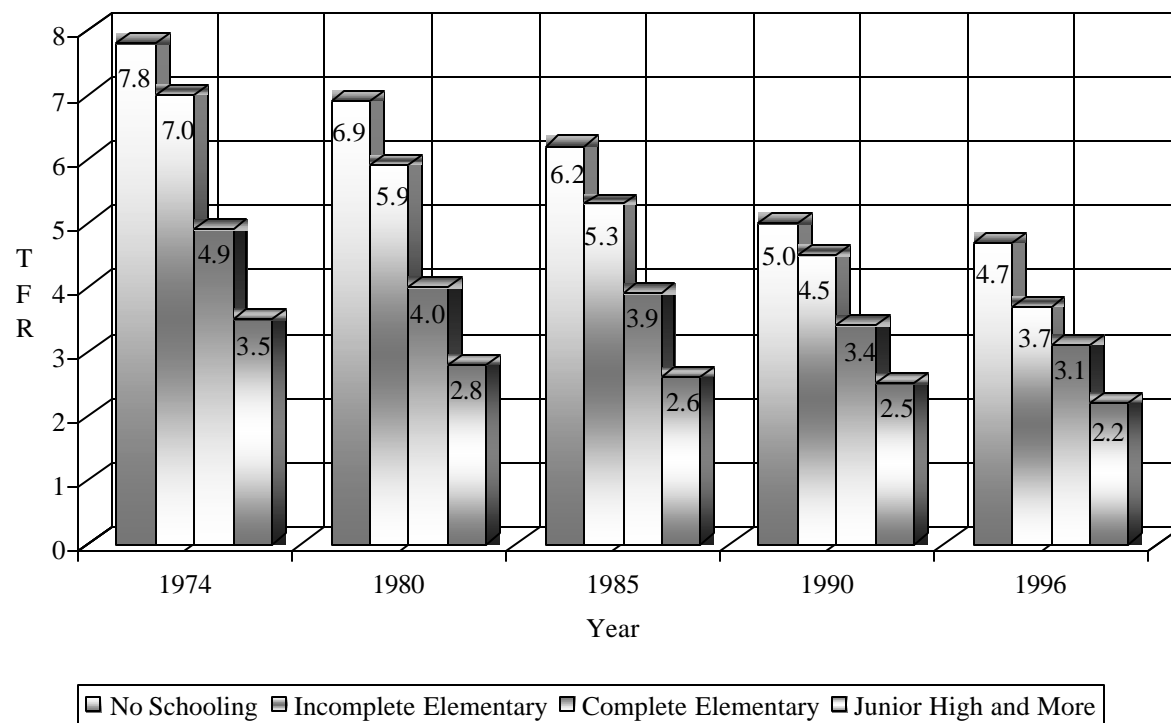
Graph 8: Age Specific Fertility Rates (15-45).  
Mexico, 1965-1995 (Source: Table 3)



Graph 9: Total Fertility Rates By Place of Residence  
(Rural and Urban).  
Mexico, 1974-1996 (Source: Table 4)

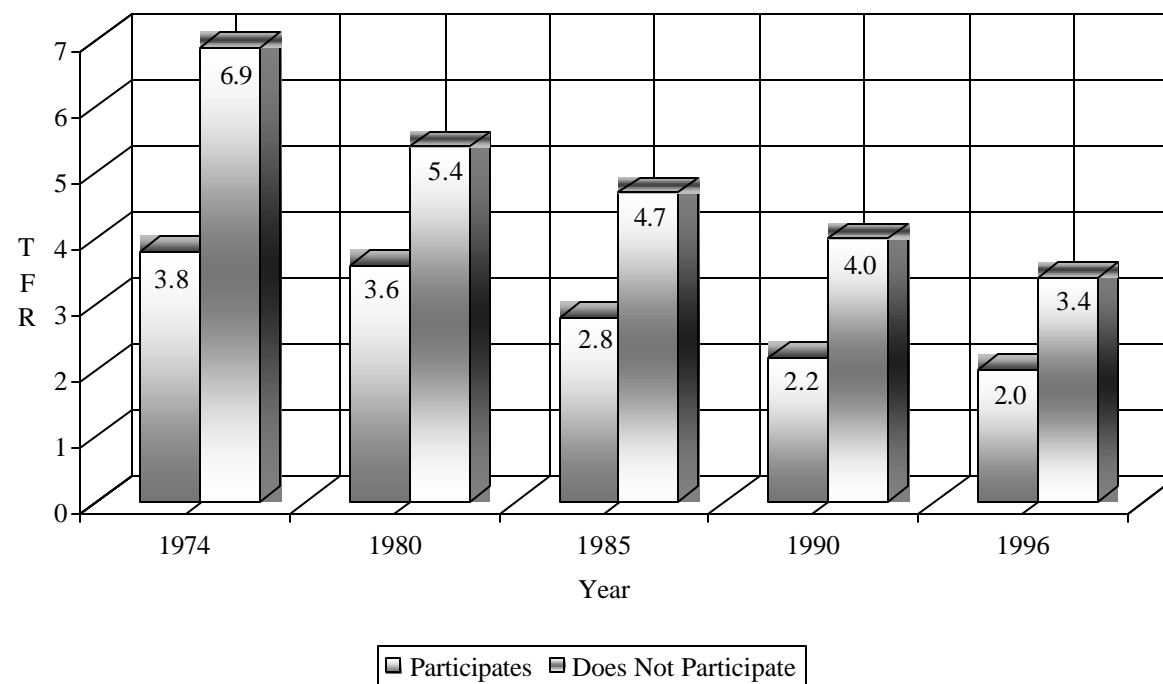


Graph 10: Total Fertility Rates By Formal Education.  
Mexico, 1974-1996 (Source: Table 5)

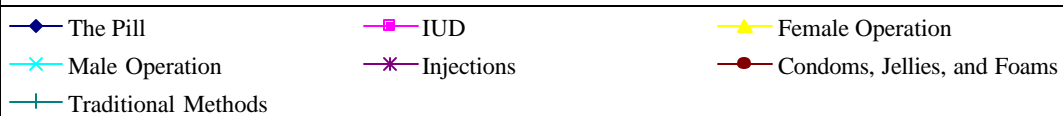
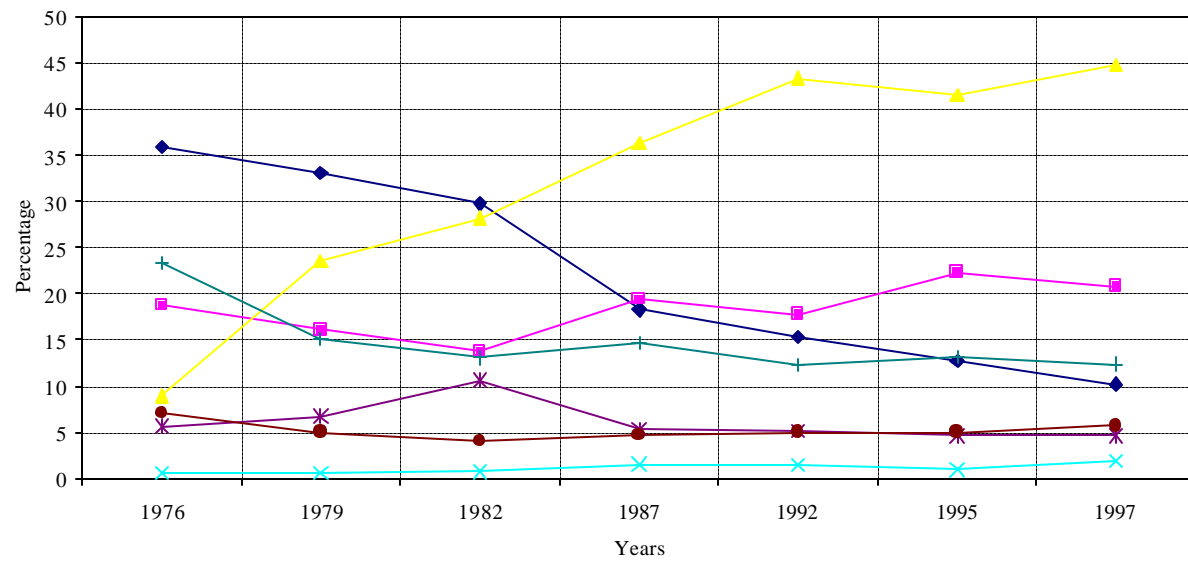




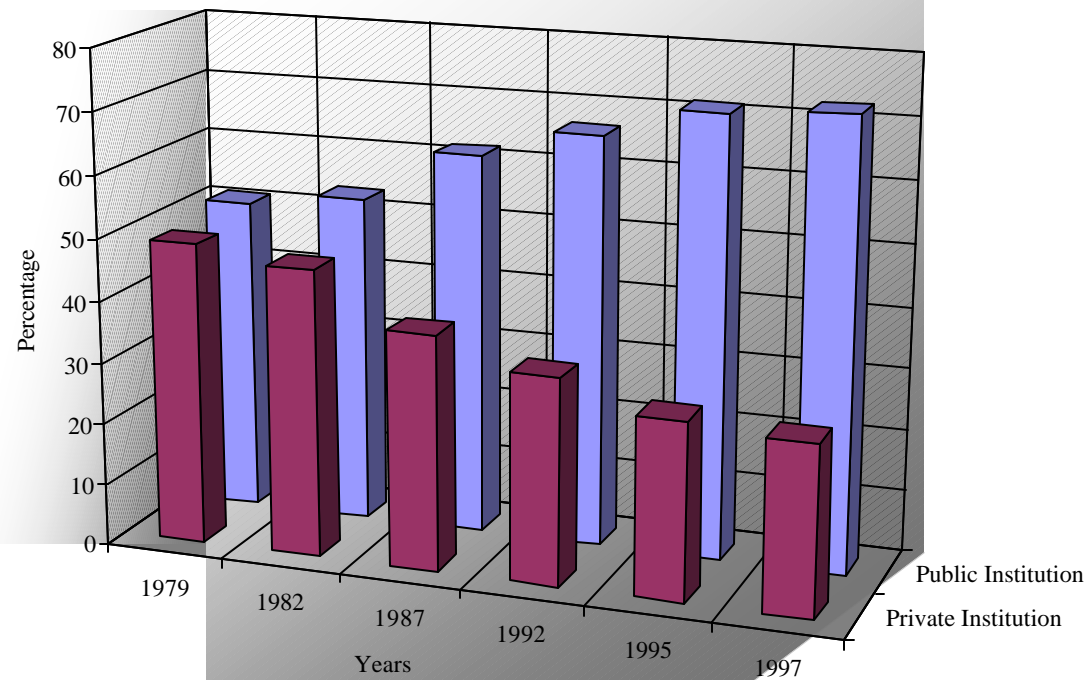
Graph 11: Total Fertility Rates  
By Labor Market Participation.  
Mexico, 1974-1996 (Source: Table 6)



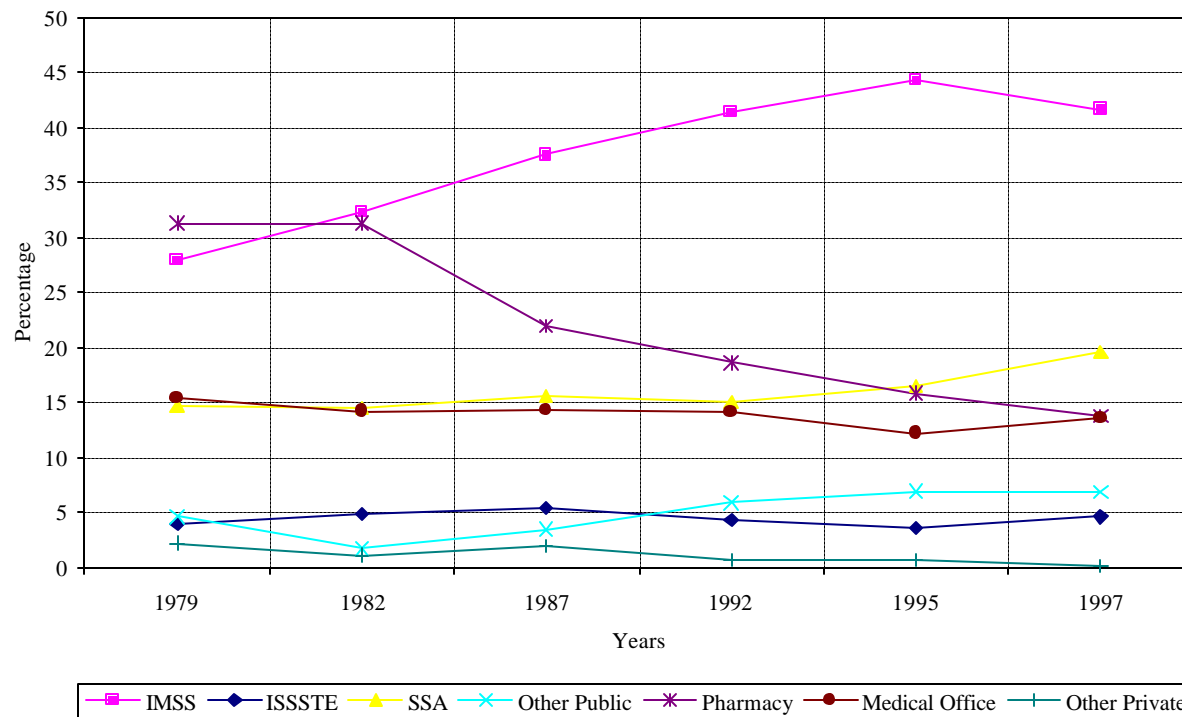
Graph 12: Contraceptive Usage Among Married Women, 15-49 Years of Age,  
By Type of Method Used. Mexico, 1976-1997 (Source: Table 8)



Graph 13: Contraceptive Usage Among Married Women, 15-49 Years of Age,  
By General Institutional Source. Mexico, 1976-1997 (Source: Table 9)



Graph 14: Contraceptive Usage Among Married Women, 15-49 Years of Age,  
By Specific Institutional Source. Mexico, 1976-1997 (Source: Table 9)



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## Vita

Alejandro Roberto Cervantes-Carson was born in Mexico City on September 18, 1960, the first child of Barbara Lee Carson and Alejandro Cervantes Bustamante. After completing *preparatoria*, or high school, at the *Centro Activo Freire* in Mexico City, in 1979, Alejandro spent several years (1979-1982) teaching at the *Escuela Decroly (de la Ciudad de México)*, where he himself studied from elementary school through junior high. He entered college at the *Universidad Autónoma Metropolitana (UAM) de Xochimilco* (in Mexico City) in 1980 and completed his Bachelor of Arts degree from that institution in January 1986. While studying for his B.A., Alejandro was hired as a research assistant at *El Colegio de México*, in the Center for Demographic and Urban Studies. Following his graduation, Alejandro was employed from 1987-1989 as a researcher to develop socio-demographic analyses for the Mexican Ministry of Health. From 1989-1990, he served as Advisor and then Coordinator of Advisors to the Secretary General of the National Population Council. He began his academic publishing at this time, with four research monographs, six book chapters, and six articles.

In August of 1990, Alejandro moved to the United States and enrolled in the Ph.D. program at the University of Texas at Austin. There he received his Master of Arts degree in sociology in 1994. He continued to publish throughout graduate school with two more book chapters and nine more articles, and then successfully defended his dissertation proposal in November of 1997. During his



graduate career, Alejandro took advantage of many invitations to teach at both the graduate and undergraduate level. He taught both Master's and Doctoral level courses at *El Colegio de la Frontera Norte*, and a Master's level course at the *Universidad Nacional Autónoma de Honduras* in Tegucigalpa.

In May 1998, Alejandro accepted a full-time, tenure-track position at Guilford College in Greensboro, North Carolina and spent three years working there and commuting weekly to Guilford from his home in Virginia. While at Guilford, Alejandro published three more book chapters and one more article. In his third year at Guilford, he was recruited by Mary Washington College in Fredericksburg, Virginia, where he is currently employed as a full-time, tenure-track assistant professor of sociology. He remains an active teacher-scholar.

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